279.

SUPREME COURT OF THE UNITED STATES.

Nos. ~~115~~ 25. and 26. 114.

CLAIMANTS OF THE SHIP VIRGIN, APPELLANTS

VERSUS

ADAM VYFHUIS, JUNIOR, LIBELLANT;

AND

ADAM VYFHUIS, JUNIOR, APPELLANT,

VERSUS

CLAIMANTS OF SHIP VIRGIN.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print.
Style of the circuit court	1	2
Parties	1	3
Record of the district court	1	3
Libel	2	3
Translation of the bottomry bond	7	5
Exhibit B, disbursemen's by Hooglant	10	7
Exhibit C, disbursements by D'Arnaud & Co	11	8
Answer of Frederick C. Graf	12	8
Order of court for warrant of appraisement	16	10
Warrant of appraisement	16	11
Oath of the appraisers	17	11
Appraisers' return	17	11
Stipulation	18	11
Answer of John C. Delprat	19	12
First deposition of Captain Cunyngham	23	14
Decree of the district court	27	16
Appeal	28	16
Commission to Amsterdam	29	16
Appellant's interrogatories	31	17
Appellee's interrogatories	34	19
Agreement	34	19

	Original.	Print
Prayer of appeal on the part of Vyfhuis	81	19
Agreement	81	19
Deposition of Jacob Hooglant	35	19
Cross examination of J. Hooglant	37	20
Deposition of Cornelius Abrahamzs	38	21
Cross examination of C. Abrahamzs	40	22
Deposition of Jan H. Geers	41	23
Cross examination of J. H. Geers	44	24
Commissioners' return	44	24
Notarial certificate	45	25
Second deposition of Captain Cunyngham	46	25
Letter of instructions	48	26
Translation of the bottomry bond	49	26
First interlocutory order	52	28
First report of the clerk and his assistants	57	30
Exhibit O, Captain Cunyngham's account referred to in the report	58	31
Mr. Graf's letter to Captain Cunyngham, of 6th September, 1822	60	32
W. Collector's certificate of Graf's ownership	62	33
Bill of Lading, A	63	34
Ditto, B	63	34
Ditto, C	64	34
Ditto, D	65	35
Ditto, E	65	35
Ditto, F	66	35
Statement S, of that part of the cargo on board not J. C. Delprat's	67	36
Letter from Mr. Graf to Captain Cunyngham, dated 14th September, 1822	67	36
Letter from Capt. Cunyngham to Mr. Graf, dated Amsterdam, 3d Nov. 1822	68	37
Exceptions to the first report of the clerk	70	38
Second interlocutory order	73	39
Second report of the clerk and commissioners	76	41
Decree in the circuit court	78	42
Prayer for appeal on the part of Delprat and Graf	79	42
Appeal bond	79	42
Prayer of appeal on the part of Vyfhuis	81	43
Agreement	81	43

THE UNITED STATES OF AMERICA, *District of Maryland*, } *to wit:*

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first day of November, in the year of our Lord one thousand eight hundred and thirty:

Present:

The honorable GABRIEL DUVALL, *one of the Associate Justices of the Supreme Court U. S.*
ELIAS GLENN, *Judge of Maryland District.*
NATHANIEL WILLIAMS, Esq., *Attorney.*
THOMAS FINLEY, Esq., *Marshal.*
PHILIP MOORE, *Clerk.*

28.

Among other, were the following proceedings, to wit:

The SHIP VIRGIN and Claimants, *vs.* ADAM VYFHUIS, jr. } Parties.

Be it remembered, that heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and twenty four, the claimants of the ship Virgin, by George H Stewart, their attorney, filed in the circuit court here the following record, to wit:

THE UNITED STATES OF AMERICA, *District of Maryland,* } *to wit:*

At a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in March, in the year of our Lord one thousand eight hundred and twenty four: Record of the circuit court.

Present:

The honorable THEODORICK BLAND, *Judge of the Maryland district.*
ELIAS GLENN, Esq., *Attorney.*
PAUL BENTALOU, Esq., *Marshal.*
PHILIP MOORE, *Clerk.*

Among other, were the following proceedings, to wit:

ADAM VYFHUIS, jr. *vs.* The SHIP VIRGIN, &c. } *Libel.*

To the honorable Theodorick Bland, Judge of the District Court of the United States of America, in and for the District of Maryland.

The libel of Adam Vyfhuis, junior, of Amsterdam, in the kingdom of Holland, there being a general factor, under the name, style, and firm of business of Vyfhuis & Co., respectfully shows: Libel.

That a certain ship, called the Virgin, of and belonging to the port of Baltimore, in the United States of America, and commanded by a certain John Cunyngham, was, in the month of November, in the year eighteen hundred and twenty-two, in the port of Amsterdam, in the kingdom aforesaid, in parts beyond the seas, and within the jurisdiction of this honorable court, whence she had arrived last from Baltimore, and destined thence to her home port of Baltimore; but your libellant represents that the said ship then and there needed extensive refitting, and various supplies and munitions, and expenditures, to enable her to depart upon, and accomplish her appointed voyage, as aforesaid, to Baltimore, and was without pecuniary funds or means therefor to procure what was so required for that purpose by the insufficient condition of said ship, and what was necessary for her preservation.

Your libellant now states to your honor, that, in this destitute situation, the said Cunyngham, master as aforesaid of said ship, borrowed from your libellant, for the refitting, victualling, supplies, and necessary expenses of the said ship, to qualify the said ship to prosecute her said voyage, and to preserve and restore her, the sum of three thousand two hundred dollars, at the marine interest of ten per cent. upon bottomry of said ship Virgin.

This libellant further gives your honor to understand, that, in pursuance of the understanding and terms upon which said loan was made, the said

Cunyngham executed a certain notarial act of bottomry, of which the writing herewith exhibited, marked A, and here prayed to be taken as part of this libel, is an authentic exemplification; by which act or instrument the said Cunyngham did hypothecate, pledge, and bind the said ship Virgin, her tackle, apparel, and furniture for the repayment to this libellant of the said sum of three thousand two hundred dollars, together with marine interest aforesaid, making, as in said hypothecation is stated and agreed, the sum of three thousand five hundred and twenty dollars, to be paid eight days after the arrival of the said vessel at her destined port of Baltimore.

This libellant now charges that the said ship has been arrived at her said port since the day of March, eighteen hundred and twenty-three, and more than eight days; and yet the said sum of money so due by the hypothecation, and in consequence of the said loan, remains wholly unpaid to this libellant, although demanded by him to be paid.

Your libellant now begs leave to present to your honor the particulars, in part, of the disbursements made by said Cunyngham for the benefit of said ship and her qualification for her voyage, with the means furnished by this libellant's loan; and for these details he refers to the writings herewith exhibited, marked B and C, signed by said Cunyngham, in proof of his confirmation of their statements, and which this libellant prays may be taken as part of this his libel. And although the loan aforesaid of this libellant has been thus devoted in the cause and for the improvement and ability of said ship, neither the said Cunyngham, nor the owner or owners of said ship, will repay to this libellant the amount with which he came to the support of the said ship, and of the interest thereon.

And your libellant further charges, as his belief, that a certain Frederick C. Graff and John C. Delprat are the owners of said ship Virgin. Wherefore your libellant prays the process of this honorable court to attach the said ship, the Virgin, her tackle and apparel, and to cite and admonish the said Cunyngham, and the said Frederick C. Graff and John C. Delprat, and all others concerned, to show cause, if any they have, why the said vessel, her tackle and apparel should not be sold to satisfy the said demand upon the aforesaid hypothecation.

And your libellant further prays that the said Cunyngham may be required to answer the premises, and particularly that he may accurately state the condition of said ship Virgin, in all points of her necessity, at the time of the loan as aforesaid, and antecedent thereto, and what were the means at that period, or the funds and resources previously within the reach, or which might have been secured to and within the control of said Cunyngham for and in relation to the necessities and supplies of said ship Virgin; and that he may duly and minutely set forth, not only as he knows, but also as he believes or has heard, all the actual or contemplated funds or pecuniary resources, whether in any property or otherwise, at any time within the possession, reach, or expectation of said Cunyngham between the time of his leaving Baltimore, from which port the said ship Virgin had arrived at Amsterdam as aforesaid, and the time of said loan as aforesaid, or which by any means or measures, or in any event or circumstances, and in what event or circumstances, and by what means or measures, he might have applied to, and for the purposes and objects for and in relation to which the money lent as aforesaid was used and applied; and that said Cunyngham may in like manner, according to his knowledge and belief, further set forth who, at Amsterdam, were the consignees of the said ship Virgin and of her cargo, or of either; and who were the owners of her cargo on the voygea

here in question; and whether the said consignees were ever requested by said Cunyngham to furnish the said ship with the necessary moneys for her aid and supplies aforesaid, and for the purposes to and on account of which said loan was made, and said hypothecation took place, and what was their answer, declarations, acts, conduct, and resolutions, touching the said request, if any were made, and in relation to the wants and supplies of said ship; and that he may set forth, accurately and particularly, all the measures and proceedings of said consignees in relation to and about the said ship, her freight and cargo, from the time of her arri[illegible] at Amsterdam as aforesaid, until her departure thence; and what, if any, funds or moneys of the owners of said ship, or of her cargo, or of both, came into the possession, or under the control or command of the said consignees, whether upon the freight or sales of the cargo, or by any other means, to the knowledge or according to the belief of said Cunyngham; and how, as the said Cunyngham knows or believes, or has heard, the said funds or moneys were by said consignees disposed of, or appropriated, or accounted for or with; and that, finally, the said Cunyngham may set forth all that occurred and was transacted in relation to the loan and hypothecation aforesaid, whether the same relate to this libellant or to the consignees aforesaid, and to the participation or procedure of them, or either of them, in regard thereto. And your libellant prays that your honor will pass such further decree in the premises as to your honor shall seem adequate and just.

CHARLES F. MAYER,
Proctor for Libellant.

Exhibit A.

Translation from the French, being also exhibit B, with Captain Cunyngham's second deposition.

Before me, Charles Abraham de Chausepie, doctor of laws, and his colleague, notaries public, residing at Amsterdam, appeared Mr. John Cunyngham, of Baltimore, in the United States of North America, captain of the frigate, the Virgin, of the burthen of three hundred thirty-seven tons and eighty-nine ninety-fifths, now laying in the New Deep, come from Baltimore, and intending to return thither, who acknowledged by these presents to be indebted to Messrs. Vyfhuis & Co., agents at Amsterdam, in the sum of three thousand two hundred dollars, amounting at par to eight thousand guilders, Netherland currency, for a like sum Mr Adam Vyfhuis, junior, of Amsterdam, Leidsche straat, agent, carrying on business under the said firm of Vyfhuis & Co., licensed as such for this instant year by an act delivered on the fifteenth April, No. 2895, exhibited to us, the notaries, who was present and accepted, hath lent for the account of his said firm on bottomry, and at the interest of ten per centum on the hull and keel of the said ship, the Virgin, to Mr. Cunyngham, in order to enable him to pay the expenses of the repairs, purchase of provisions, and other expenses he hath been obliged to lay out. The said loan will take place for the voyage, which Mr. Cunyngham intends to undertake with the said ship, from the New Deep to Baltimore, for which place he is ready to depart with the first fair wind. Bottomry bond.

The said Captain Cunyngham promises to return to Messrs. Vyfhuis & Co. or to their order, eight days after the arrival of said ship at Baltimore, the above mentioned sum of three thousand two hundred dollars, or so eight thousand guilders Dutch, together with the maritime profit agreed on at the rate of ten per centum, making a sum of dollars three thousand five hundred twenty, or so eight thousand eight hundred guilders Dutch.

In consequence thereof, the said CaptainCunyngham binds and pledges to the said lenders the said ship, the Virgin, her tackle and appurtenances, as well for the principal as also for the interest of the sum so lent, according to law.

And in case the said ship might wreck on her intended voyage, the said Captain authorizes, for as much as needs be, the aforesaid Messrs. Vyfhuis & Co. to take possession of all and what can be saved of her, and to proceed to the sale thereof, as also to receive the amount of the same in payment either of the whole or of part of the debt now contracted, all under obligation as above, and renouncing all exceptions and means which could diminish or attenuate the effect of these presents, choosing domicile in this city, in the office of the undersigned notary. And as Captain Cunyngham is not sufficiently skilled in the French tongue to understand the contents of these presents without interpretation, we, the notaries, have requested Mr. Chas. Godefroi Reichelt, of this city, Nieuve Tyds Achterburgwal, near the Molstug, sworn interpreter, to interpret these presents to the said Captain from the French into the English; which request the said Mr. Reichelt, who appeared to that end before us, hath complied with.

Done and passed at Amsterdam, in the office, the twelfth November, 1822, and Messrs. Cunyngham and Vyfhuis have, with the translator and the notaries, undersigned the minute, which was previously read, and remains in the possession of de Chausepie.

(Signed) J. CUNYNGHAM,
A. VYFHUIS, Jr.,
C. G. REICHELT,
C. A. DE CHAUSEPIE,
BD. BLOMMAN JOHZ, *Notary.*

(Follows the registry.)

Registered at Amsterdam, the 12th November, 1822, vol. 7, fo. 57, Ro. 2 and 3; received with the augmentations 55 guilders 4½ cents.

(Signed) DE KANTER.

A true copy agreeing with the minute, which remains in the possession of the undersigned notary.

[SEAL.] (Signed) C. A. DE CHAUSEPIE,
Notary Public.

(On the engrossed one was written—)

Registered in the registry of Tribunal of the First Instance, performing the functions of the Tribunal of Commerce at Amsterdam, the thirteenth November, 1822, (Signed) A. Uitenhargen de Mist. Registrar.

(Signed) C. A. DE CHAUSEPIE.

The undersigned, notaries public, residing at Amsterdam, certify that the firm above is that of C. A. de Chausepie, doctor of laws, notary public, residing at Amsterdam, and that faith ought to be given to it, as well in court as thereout. In testimony whereof, we have undersigned these presents.

AMSTERDAM, *the 15th November*, 1822.

JAN CHR. MEYER, *Notary.*
(Signed) B. A. VAN HOUTEN, *Notary.*

Faithfully translated. Amsterdam the 15th November, 1822.

[SEAL.] JOANNES VERGEEL *Luc Sont,*
Sworn Translator.

285.

Exhibit B.

Bill of disbursements paid by J. Hooglant for the use of the ship Virgin, Captain J. Cunyngham.

1822.				
Oct.	For pilotage inwards		$ 101	2
	Assistance of a boat in the New Deep		27	
	Quarantine expenses		36	10
	Services of a pilot		31	
	Clearing in by the custom-house officer		4	
	Carriage hire to Alkmaar		18	
	The notary's charge noting protest		4	6
	Assistance of a boat transporting the ship		16	
	Attending discharging the cargo		32	
	Custom-house charge on sealing the lighters		53	11
	Ditto on measuring the ship		9	8
Nov.	Harbor duty of the New Deep		48	10
	Cash advanced		350	
	Mats		52	18
	Carpenter's work		138	9 8
	Blacksmith's ditto		33	
	Sailmakers' ditto		863	16 8
	Cooperage, and repairing tobacco hogsheads, sugar chests, and water casks		45	15
	Cordage		248	18
	The butcher		337	7 8
	Gin, wine, and sugar		124	11 8
	Butter and oil		20	11 8
	The baker		17	8
	Place duty on discharge and on consumption of provisions		10	17
	Clearing out at the customs		8	
	Assistance of a boat on the New Deep		20	
	For water, chickens, oats, ballast, &c., and for attending the ship, and outward pilotage		296	2
	J. D. Vrus, for delivered clothing to the officers and ship's crew		676	5
	The shoemaker, for delivered shoes		135	8
	Grocer for the ship's use		28	16
	Ditto for the people's use		40	16
	To my commission, postage of letters to the captain and mate, and advertising the crew		100	7 8
			$3,930	14

HELDER, *November 7th*, 1822.

J. HOOGLANT,
J. CUNYNGHAM.

Exhibit C.

AMSTERDAM, *8th November*, 1822.

Account of disbursement made on account of the ship Virgin, John Cunyngham, master, from Baltimore, by D'Arnaud & Co.

1822.			
Oct. 14.	To cash to the Captain		$ 100
17.	Peter Baker, lighter		57 2
23.	Herde de Wielde, 2 do.		55 12
	Lammert Hail, 3 do.		56 2
24.	Corns. Vandeloych, 6 do.		55 12
25.	Corns. Koan, 5 do.		57 12
	Jan Kleyn, 7 do.		56 12
28.	Matthew Plaak, 4 do.		58 20
Nov. 1.	To cash to the Captain		200
3.	G. Kouderink, 8 do.		55 12
4.	H. Scholtz, attending the discharge of the lighters and watchers		71 13
	H. Hulton & Sons, 6 barrels beef		156
	The rope yard, Goote Zeervant, one cable		967 9
	G. Blanche, ship chandler		160 2
	Baltman & Co., herrings		35 18
	J. J. Mammel, bread		48 6
8.	M. Vandrep, in outward tonnage money		761 18
	Custom-house fees		21
	Acquitting the lighters' passports		12
	American consulate		10 10
	Our commission		50
	Portage and petty charges		8 16
			$3,055 18

D'ARNAUD & Co.

Approved:

J. CUNYNGHAM.

Received from Messrs. Vyfhuis & Co. the above amount of three thousand and fifty-five guilders eight stivers.

D'ARNAUD & Co.

ADAM VYFHUIS, junior, *vs.* The SHIP VIRGIN. } *Answer of Frederick C. Graf.*

To the honorable Theodorick Bland, Judge of the District Court of the United States for the District of Maryland.

Answer of Frederick C. Graff.

The separate answer of Frederick C. Graff, owner of one-third of the ship Virgin, respondent, to the libel of Adam Vyfhuis, Junior, of Amsterdam, in the kingdom of Holland, (there being a general factor,) libellant.

This respondent now, and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the mani-

fest uncertainties and imperfections in the said libel contained, for answer thereunto, or unto so much thereof as materially concerns him to make answer unto, this respondent answers and says:

That he does not admit that any part of the money stated in the libel to have been supplied for the use and necessities of the said ship Virgin was so supplied, nor that any part of said money was actually applied to the use, purposes, and necessities of said ship.

Respondent utterly denies that there was any necessity for the taking up of money or a bottomry of said ship, because of her standing in need of money for the refitting or victualling of her, or for her supplies and necessary expenses. And respondent expressly charges and states that the condition of the ship was such as to render any supply of money for the purposes aforesaid unnecessary, except perhaps to a very trifling amount.

Respondent, further answering, saith that the aforesaid bottomry of the ship was absolutely unnecessary and improper, because funds amply sufficient for all the purposes of said ship, might have been obtained for her whilst she lay at Amsterdam either upon the credit of her owners, (whereof respondent was one,) or of Captain John Cunyngham the master of the ship, who, as respondent is informed, and verily believes, might have got upon his own credit whatever money he wanted for the ship.

Respondent states and charges that the said Captain Cunyngham might have obtained said money on his own credit either from the house of Vanstaphorsts & Co., in Armsterdam, to whom the ship was consigned, or from another commercial house in Amsterdam who were ready to have made whatever advances Captain Cunyngham required upon his personal responsibility.

Respondent further states that the whole amount of freight earned by said ship on her arrival at Amsterdam was received by the house of Vanstaphorsts and Company, to whom the ship was consigned; and that as said house was bound upon every principle of justice, equity, and commercial usage, to supply the funds needful for any purposes of the ship, so he believes that the large sum of about five thousand six hundred dollars freight that was received by the said consignees ought to have been, and, with honest and fair dealing might have been, applied to the needful purposes of the ship, without any recourse being had to the unnecessary and (under those circumstances) illegal bottomry of the ship.

Respondent verily believes that this bottomry to libellant is merely colorable, and that the extravagant advances pretended to have been made by the libellant on the score of necessity, were (if made at all) made by the loan of Vanstaphorsts, the aforesaid consignees of the ship, for some sinister, dishonest, and fraudulent purpose, and without any cause or necessity to justify the same.

Respondent further states that, from the accounts and exhibits filed with the said libel, it appears that the money pretended to have been advanced for the purposes of the ship, was advanced at periods several days prior to the date of the bottomry bond, and that the objects upon which it is pretended the money was expended and disbursed, are objects which do not justify the bottomry of the ship, even supposing that money could not have been obtained for the ship in any other way.

Respondent admits that the said ship Virgin has arrived at the port of Baltimore more than eight days ago, and that he has not paid the sum for which it is pretended that the bottomry was effected: for this failure to pay

the said money, respondent relies upon the reasons which he has set forth in this answer, and upon other grounds which he has been advised to resist the payment of said bottomry bond, believing the same to be against equity and conscience, inasmuch as it is a mere color and mark assumed by the real lenders of the money, who were bound to have advanced this money without any such unnecessary and fraudulent proceeding. Your respondent further begs leave to state that the present situation of the ship Virgin is such (lying at heavy expense, and unemployed under the process of your honorable court) that it is most desirable for all parties concerned that the ship Virgin should be appraised and valued under the order and direction of your honorable court, and that, after the said appraisement and valuation, that the said ship be delivered to respondent on stipulation, and upon his giving the security which your honorable court may require, and that your honor will make such further order and decree in the premises as to your honor shall seem *seem* meet and proper.

GEO. H. STEUART,
Proctor for Respondent.

CITY OF BALTIMORE, *sct.*

On this twenty-second day of March, one thousand eight hundred and twenty-three, before me the subscriber, a justice of the peace of the State of Maryland, for the city for Baltimore aforesaid, personally appears Frederick C. Graff, the party respondent in the foregoing answer, and made oath that the facts and things therein set forth are true to the best of his knowledge and belief.

DAVID B. FERGUSON.

ADAM VYFHUIS, jr.
vs.
The SHIP VIRGIN, &c. } *District of Maryland.*

Order of court.

On motion, it is hereby ordered and adjudged by the consent of the libellant and respondents in this cause, that Louis Brantz, Thomas W. Norman, and William Price, or any two of them, be, and they are hereby appointed appraisers, to appraise and value the said ship Virgin, her tackle, apparel and furniture, and to make return thereof on oath unto this court; and that the said ship, together with her tackle, apparel and furniture, be delivered to the said respondent, Frederick C. Graf, on his entering into stipulation for the said appraised value, with Jacob J. Hoogewerff and Christian Mayer as securities.

THEODERICK BLAND,
Judge of the Maryland District.

UNITED STATES OF AMERICA, *District of Maryland,* } *to wit:*

To Louis Brantz, Thomas W. Norman, and William Price, esquires, of the city of Baltimore, greeting:

[SEAL].

You, or any two of you, are hereby authorized and required by the judge of the district court of the United States in and

289

Warrant of appraisement.

for the District of Maryland, to appraise and value the ship Virgin, her tackle, apparel and furniture, as she now lies at the port of Baltimore; having been first duly qualified to appraise and value the same according to the best of your skill and judgment, and return such, your valuation, under your hands and seals, to this court.

Witness, the honorable Theoderick Bland, judge of our said court, the twenty-second day of March, in the year of our Lord one thousand eight hundred and twenty-three.

PHILIP MOORE,
Clerk District Court.

BALTIMORE CITY, *to wit:*

Oath of the appraisers.

You, Lewis Brantz, Thomas W. Norman, and William Price, do solemnly swear that we will well and truly, and without partiality or prejudice, value and appraise the ship Virgin, her tackle, apparel, and furniture. as she now lies in the port of Baltimore, according to the best of our skill and knowledge.

Sworn before me, the subscriber, this twenty-second day of March, 1823.

PETER GALT.

Appraisers' return.

We, the undersigned appraisers, appointed by the annexed order of court, report that, after being duly qualified, we proceeded to value and appraise the said ship Virgin, her tackle, apparel, and furniture, and consider her to worth one thousand eight hundred dollars. In witness whereof, we hereto set our hands and seals, this twenty-second day of March, 1823.

LOUIS BRANTZ, [SEAL.]
THOMAS W. NORMAN, [SEAL.]
WILLIAM PRICE, [SEAL.]

Stipulation.

On this day, to wit, the 24th day of March, 1823, Frederick C. Graf, Jacob J. Hoogewerff, and Christain Mayer, came before me, the clerk of the district court of the United States in and for the district of Maryland, in their proper persons, and submit themselves to the jurisdiction of the said court, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound jointly and severally, in the sum of three thousand six hundred dollars, for Frederick C. Graf, claimant of the ship Virgin, unto Adam Vyfhuis, junior, to perform and fulfil the final order and decree of this court; and, in case of an appeal from such final order and decree, then the final order and decree of the circuit and Supreme Courts of the United States, touching the restitution and repayment of the sum of one thousand eight hundred dollars, being the appraised value of the ship Virgin, her tackle, apparel, and furniture, in the proceedings in this cause mentioned, or any part thereof, and of all costs, damages, and interest that may be finally awarded by the decree of the said district, circuit, or Supreme Courts; and, unless they shall so do, they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods and chattles, wheresoever found, or to be found.

Acknowledged before

PHILIP MOORE, *Clerk.*

ADAM VYFHUIS, jr. } *Answer of John C. Delprat.*
vs.
SHIP VIRGIN. }

To the honorable Theoderick Bland, Judge of the District Court of the United States for the District of Maryland.

Answer of John C. Delprat.

The seperate answer of John C. Delprat, owner of two-thirds of the ship Virgin, respondent, to the libel of Adam Vyfhuis, jr., of Amsterdam, (there being a general actor) libellant.

This respondent now, and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold uncertainties and imperfections in the said libel contained, for answer thereunto, or unto so much thereof as materially concerns him to make answer unto, this respondent answers and says, that he does not admit that any part of the money, stated in the aforesaid libel to have been supplied for, and applied to the use and necessities of the ship Virgin, whilst she lay in the port of Amsterdam, were so supplied or applied; that he denies there was any occasion or necessity for the expenditure and disbursement of any money upon the said ship at the time and place set forth in the libel; this respondent verily believing that the condition of the ship was such as to render such disbursement, and expenditure on the ship absolutely unnecessary.

This respondent especially craves leave to state that he fitted out the said ship Virgin in July, 1822, on her last voyage to Amsterdam, and that he caused the said ship to be put into the most complete order at the great expense of about two thousand nine hundred dollars, as this respondent is ready to prove. These repairs were made by respondent under the direction and with the approbation of Captain John Cunyngham, who then commanded the ship; and respondent avers that the sufficiency of these repairs for the voyage then undertaken, as fully admitted by the said John Cunyngham.

Respondent further states that the Virgin sailed on the said voyage, from Baltimore to Amsterdam, on or about the thirtieth day of July, in the year one thousand eight hundred and twenty-two aforesaid, (the season of the year which is considered most favorable for that voyage;) and that she performed the said voyage without experiencing any stress of weather. That the ship arrived at Amsterdam in good order on the tenth day of October, in the year last aforesaid, and delivered her cargo in the best possible order, (as will appear by reference to the deposition of Captain John Cunyngham, taken and filed in this honorable court, in the case of a libel of George McCalmont and others against the ship Virgin, in said court instituted.) Respondent further states that he consigned said ship, on her aforesaid voyage, to the house of N & J. & R. Vanstaphorst of Amsterdam, and that he was informed by Captain Cunyngham that said consignment was accepted by said House of N. & J. & R. Vanstaphorst on the arrival of the ship at Amsterdam.

Respondent also avers that he was informed by Captain Cunyngham, that, upon his applying to the aforesaid consignees for money for the disbursements of said ship Virgin, they, the said consignees, refused to advance

ny money on account of this respondent, but said they would advance money upon the account of said Cunyngham. And this respondent avers hat, from what he understood the said Cunyngham to say, this respondent believes that said Cunyngham might have obtained on his own account from the said consignees, and upon his own credit, whatever reasonable sum he might have demanded for the use and disbursements of said ship Virgin. And this respondent further states that said Cunyngham was in no respect under the necessity of taking up any money upon the bottomry aforesaid, because, as captain of the ship Virgin, and having control of the cargo laden on board, he had it completely in his power to compel the consignees of said ship to agree to advance the whole, or any needful part of the freight of said ship, for her disbursements, by refusing to deliver the said cargo until he was assured that all needful demands for victualling and repairing the ship would be paid by the consignees out of the freight, (which in fact amounted to about six thousand dollars, and was actually received by the aforesaid consignees.)

And this respondent further states that a large amount of the disbursements for which said bottomry was taken, were improper, being for wine, gin, sugar, chickens, and other cabin stores which the said Cunyngham had no right to charge to the owners of the ship, he being allowed by contract one hundred dollars in full for his cabin stores, &c. &c.

And he also states that many of the items in the disbursements charged to said ship, are unsupported by any vouchers.

This respondent also avers, that he believes said money, pretended to have been advanced on the aforesaid bottomry by the libellant Vyfhuis, was not in point of fact advanced, or any part thereof by him, but that the whole of said amount (if true,) was advanced by the consignees, N. & J. & R. Vanstaphorst, who made use of the name of the said Vyfhuis to cover their said secret advances. Respondent was informed by Captain Cunyngham that he never saw the said Vyfhuis until the day upon which he executed the bottomry bond, and yet, upon reference to the accounts filed by libellant, it will appear that moneys were advanced for the said disbursements of the ship sometime previous to the date of the bond, which moneys (if advanced at all) respondent believes were all advanced by the aforesaid consignees N. & J. & R. Vanstaphorst.

Respondent further states that he is confirmed in this belief by letters received in Baltimore from a respectable merchant in Amsterdam, of a late date, stating that the active partner in the aforesaid house of N. & J. & R. Vanstaphorst, have acknowledged that they were the real lenders of the money upon the aforesaid bottomry. This respondent therefore prays, that a commission may be issued to Amsterdam to take the depositions of witnesses to prove this acknowledgment of the Vanstaphorsts, and he also prays to be hence dismissed with costs.

G. H. STEUART,
Proctor for Respondent.

John C. Delprat appears before me, this 27th June, 1823, and makes oath to the facts set forth in the aforegoing answer are true.

Sworn before,

J. B. LATIMER,
A Justice of the Peace for the City of Baltimore.

UNITED STATES OF AMERICA, } *sct.*
District and State of Maryland, }

Be it remembered, that, on this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and twenty-three, at the city of Baltimore, before me, William H. Gatchell, a commissioner appointed by the circuit court of the United States for the district aforesaid, in the fourth circuit of the said United States, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," personally appears John Cunyngham, a witness for the libellant, in a certain civil cause now depending in the district court of the United States for the District of Maryland, wherein Adam Vyfhuis, junior, is libellant against the ship Virgin. And the said witness being by first me carefully examined, and cautioned, and sworn to testify the whole truth, makes oath, deposeth and saith, that he was master of the ship Virgin on her voyage from Baltimore to Amsterdam, and thence back to Baltimore, from which she returned in March last; that, while the said ship was at Amsterdam, she stood in need of repairs to her hull, sails, and a cable, and other supplies to enable the said ship to prosecute her voyage in safety on her homeward voyage to Baltimore; that the consignees of said ship positively refused to advance money to this deponent for the purpose of enabling him to furnish the said ship with the abovementioned necessaries; and not having any other means of procuring money to obtain the said necessaries than by bottomry of the said ship, he borrowed from Adam Vyfhuis and Company eight thousand guilders on bottomry for the abovementioned purposes, which said money was employed in purchasing sails, cable, and other necessaries, and in paying for repairs to the said ship. This deponent further saith that the accounts herewith exhibited and filed, marked B and C, contain true statements of the respective appropriations of the said loan as far as they extend, and that the balance of the said eight thousand guilders was expended in provisions and other necessaries for the said vessel. This deponent further says that the document marked A is, as this deponent believes, a true copy of the bottomry bond, executed as aforesaid to the said Vyfhuis and Company; and that this deponent endeavored to obtain money at Amsterdam upon the credit of the owners, without success, before he executed the bottomry bond as aforesaid, and that he had no authority to draw upon any person or persons for any moneys for the benefit of said vessel, on the voyage aforesaid, on account of the said owners.

Deposition of John Cunyngham.

J. CUNYNGHAM.

Cross-examination.

This deponent says that he was not acquainted with the said Vyfhuis, nor had he any communication with him, until he was about borrowing the said money on bottomry as aforesaid, when he was introduced to the said Vyfhuis on the twelfth day of November, eighteen hundred and twenty-two; but this deponent says that he was informed by the broker who had engaged to procure the moneys for him on bottomry about the first of November, in the year aforesaid, that the said Vyfhuis had agreed to advance the money on bottomry at a

Cross-examination.

293.

premium of ten per cent. The sums of money that were furnished to the ship previous to the first of November, as charged in the accounts B and C, were furnished upon the responsibility of this deponent, he pledging himself that the said sums should be paid. This deponent further says that he applied to N. & J. & R. Vanstaphorst to advance him money on bottomry, and that they refused to do so; and this deponent does not know that the said Vanstaphorsts have any interest in the bottomry that was effected as aforesaid. This deponent while in Amsterdam received two letters from Mr. Graf informing him of his having an interest in the Virgin. This deponent did not apply to any other persons, except Vanstaphorsts, for an advance of money without bottomry, and he knew of no other persons in Amsterdam, except the Vanstaphorsts, who were the friends of John C. Delprat. This deponent mentioned to the house of Vanstaphorsts that Mr. Graf had written to him, informing him of his being interested in the Virgin. The broker who negotiated the bottomry uniformly informed this deponent that he was negotiating with Vyfhuis and Company; that at one time they asked eleven per cent., but afterwards agreed at ten per cent. That the cargo of said vessel was delivered to Vanstaphorsts agreeably to the bills of lading, and the directions therein contained without paying freight, except twenty hogsheads belonging to John P. Krafft, which were delivered also to the said Vanstaphorsts, which were chargeable with freight agreeably to the bills of lading. The negotiation for bottomry continued for about three weeks previous to the first of November, when it was agreed upon, and the said negotiation was entirely managed by the broker. The vouchers for the expenditures in the account marked B, are in deponent's possession, but the vouchers for the account marked C, were left in the posssession of Messrs. D'Arnaud and Company, at their request and for their security; the vouchers for the balance of the eight thousand guilders are in the possession of this deponent, are herewith exhibited, marked from No. 1 to 25 inclusive. The condition and state of the ship at the time she left Baltimore for Amsterdam was ordinarily good, and sufficient for that passage, but on account of bad weather during the equinox in channel and the North sea. the vessel was much injured, and also off the south of Ireland, the mainsail, and maintopsail, and foretopsail, were nearly blown to pieces, and were so much injured as to render them unfit to be repaired. In the Texel roads in stress of weather, the small bower cable was parted, and this deponent was obliged to replace it as appears by exhibit C. This deponent was authorized when the ship left Baltimore for Amsterdam, by Mr. Delprat, the owner of the said vessel, to procure a mainsail, maintopsail, and cable, at Amsterdam.

J. CUNYNGHAM.

On the back of which said disposition is endorsed, as follows:
"This deposition is admitted in evidence."

CHARLES F. MAYER, *for Libellant.*
GEORGE H. STEUART, *for Respondents.*

ADAM VYFHUIS, jr. } *In the District Court of the United States for the*
vs. } *District of Maryland.*
The SHIP VIRGIN. }

At March term 1824.—*Libel on Bottomry.*

Decree of the district court.

It is hereupon, this fourth day of March, in the year eighteen hundred and twenty-four, agreeably to the consent of parties herein, and by the authority of this court, adjudged and directed, that the prayer of the libel in this cause be granted, and that the libellant is entitled to, and recover from and out of the proceeds of sale of said ship Virgin, the sum of three thousand five hundred and twenty dollars, with interest thereon at the rate of six per centum per annum from the twentieth day of March, in the year eighteen hundred and twenty-three, the day of filing the said libel in this cause, and that the said ship be accordingly sold at public auction to satisfy the sum and amount of money decreed to the libellant as aforesaid, with costs of suit.

It is agreed that the present decree is to be considered as entered pro forma, and that the claimants be permitted to appeal without the usual stipulation required in the prosecution of appeals, and that the commission already ordered may be proceeded with; and the testimony taken under it shall be read in evidence on the trial at the hearing of the appeal, in the same manner as if the commission had issued from the circuit court.

THEODERICK BLAND,
Judge of the District of Maryland.

Appeal from the decree of the district court.

From which said decree, so as aforesaid rendered, the said Frederick C. Graf and John C. Delprat, by their attorney aforesaid, prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore on the first day of May next; and to them it is granted. Thereupon, it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same are transmitted accordingly.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the district court aforesaid, I hereunto subscribe my name, and affix the seal of the said district court, this first day of April, in the year of our Lord one thousand eight hundred and twenty-four.

[SEAL.]

PHILIP MOORE,
Clerk District Court.

THE UNITED STATES OF AMERICA, } *to wit:*
District of Maryland, }

To John W. Parker and Frederick W. Karthaus, esquires, of Amsterdam, greeting:

Commission to Amsterdam.

[L. S.] Be it known, that you are appointed commissioners to examine evidences in a cause now depending in the circuit court of the United States for the fourth circuit in and for the Maryland district, between the ship Virgin and claimants, appellants, and Adam Vyfhuis, junior, appellee.

Therefore, you, or either of you, are requested, having first taken the oath hereunto annexed, and, also, administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that, at such time and place as to you or either of you shall seem convenient, you cause to come before you, or either of you, all such evidences as shall be named or produced to you, or either of you, by either the appellants or appellee; and that you, or either of you, examine them upon their corporal oaths, to be by you, or either of you, administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of any thing that may relate to the cause aforesaid; and that you, or either of you, having reduced the depositions of the witnesses so taken by you, or either of you, into writing, you send the same, with this commission closed, under your, or either of your, hands and seals, to the said circuit court, with all convenient speed.

Witness, the honorable John Marshall, Chief Justice of our Supreme Court, the second day of August, in the year of our Lord one thousand eight hundred and twenty-four.

Issued 13 October, 1824.

PHILIP MOORE, *Clk. Ct. Ct.*

C. F. M, G. H. S.

Commissioners' oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to, and left with you by either party. So help you God.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe, the depositions of all and every, the witness and witnesses, produced before, and examined by the commissioners, or either of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or either of them, to take, write down, and transcribe the said depositions, or any of them. So help you God.

SHIP VIRGIN and Claimants, *vs.* ADAM VYFHUIS, jr. } *Appeal depending in the Circuit Court of the United States for the 4th Circuit in and for the Maryland District.*

May term, 1824.

Interrogaotries to be propounded to witnesses to be produced, sworn, and examined on the part of the appellants in the foregoing cause. Appellants' interrogatories.

1. Do you know Adam Vyfhuis, jun.? In what line of business was he engaged, if he resided at Amsterdam in the month of November, 1822? Was he then known as a person so extensively engaged in business, as to be likely to lend considerable sums of money on bottomry?

2. Do you know Captain John Cunyngham? Did you see him, or did you know any thing of his business at Amsterdam, at the aforesaid period, in relation to the ship Virgin then under his command at that place? State all you know.

3. Did you know Frederick C. Graf and John C. Delprat, of the city of Baltimore, or either of them? or have you any knowledge of their connexion, or the connexion of either of them, with the ship Virgin as her owner or owners at the aforesaid period of November, 1822, when she was at Amsterdam?

4. Do you know to whom the said ship Virgin was consigned at the period above referred to? Was she, or was she not, consigned to the house of N. & J. & R. Vanstaphorst of Amsterdam?

5. Have you any knowledge of the actual condition of the said ship whilst lying at Amsterdam at the time above stated?

6. Did the ship stand in need of such extensive repairs as are alleged to have been made on her? In other words, do you think it possible that the sum of eight thousand guilders was necessary for the repairs of the Virgin at the time aforesaid?

7. Do you know any thing respecting the bottomry loan or contract, that is alleged to have been negotiated between the aforesaid Captain Cunyngham and Adam Vyfhuis, jr.?

8. Do you know whether the said Vyfhuis lent any money, and how much? and do you know whether he loaned the money on his own account, or as an agent of others?

9. Do you know whether or not said money was furnished by the house of N. & J. & R. Vanstaphorst, or by some one of that firm, or by some other person, for and on account of said firm?

10. Have you ever heard any partner of the house of N & J. & R. Vanstaphorst say that they, the said house, were the actual lenders of the money on the bottomry alleged as aforesaid of the ship Virgin?

11. Did not some of the persons composing the firm of N. & J. & R. Vanstaphorst say in your presence that they had not acted so foolishly as to advance eight thousand guilders for John C. Delprat in the shape of expenses for the ship Virgin, without first securing themselves by a bottomry bond?

12. Was or was not said Adam Vyfhuis, jr., formerly clerk, or some how or other employed in the house of N. & J. & R. Vanstaphorst, and was it, or was it not generally known or believed that said Vyfhuis was supported or protected by the said house of N. & J. & R. Vanstaphorst at the time of the transaction of the bottomry herein before referred to?

13. Do you or do you not believe that Adam Vyfhuis, jun. was in a situation to lend money on bottomry to the amount of eight thousand guilders at the time the Virgin was at Amsterdam as aforesaid?

14. Do you know who authorized D'Arnaud and Co., of Amsterdam, and Jacob Hoogland, at the Helder, to make advances of money for the disbursements of the ship Virgin, and do you know who actually repaid said D'Arnaud & Co., or said Hoogland, for the advances made by them respectively? Please state particularly whether said authorization to make advances, or said repayments, were not made directly or indirectly by the house of N. & J. & R. Vanstaphorst.

15. Do you know any thing respecting the amount of freight earned by the ship Virgin on her arrival at Amsterdam? Was the amount sufficient to

have paid expenses to the amount of eight thousand guilders, or was it sufficient to cover all needful expenses of the ship?

Lastly. Do you know any other matter or thing material or necessary for the appellants and claimants, Frederick C. Graf and John C. Delprat, or either of them? If yea, state the same, as if you had been particularly interrogated thereto.

GEO. H. STEUART,
Proctor for the Respondents, now Appellants.

SHIP VIRGIN and Claimants, *vs.* ADAM VYFHUIS, jr. } *On appeal in the Circuit Court of the United States for the fourth Circuit in and for the Maryland District.*

Cross interrogatories for the appellee, to be propounded to witnesses produced on the part of the appellants in this cause. Appellee's interrogatories.

1. How do you know, and why do you assert, that the money advanced on bottomry of the ship Virgin, mentioned by the appellants, was advanced by Adam Vyfhuis, jr., as agent of J. & N. & R. Vanstaphorst? State all the circumstances which induce you to say so.

2. Do you know the particulars of accounts between the house of J. & N. & R. Vanstaphorst, and Frederick C. Graf and John C. Delprat, the appellants, together or separately? Were the said Graf and Delprat, or was either of them, indebted to said house of Vanstaphorsts when the said freight money was received by them, if at all received? What was the amount of said debt?

CHARLES F. MAYER,
Proctor for the Appellee.

We agree that the commission for evidence in the above cause shall issue to Amsterdam, directed to John W. Parker and Frederick W. Karthaus, with power to either of them. 5th October, 1824. Agreement.

GEO. H. STEWART,
Proctor for Appellants.
CHARLES F MAYER,
Appellee's Proctor.

Deposition of a witness, produced, sworn, and examined, on the second day of May, eighteen hundred and twenty-five, at the house of John Henry Zilver, notary public, residing in the city of Amsterdam, in the kingdom of the Netherlands, by virtue of a commission issuing out of the circuit court of the United States for the fourth circuit in and for the district of Maryland, to John Williams Parker and Frederick Wilhelm Karthaus, esquires, or either of them directed, for the examination of witnesses in a cause of appeal now depending in said court between the ship Virgin and claimants, and Adam Vyfhuis, junior, as well on the part and behalf of the said appellants, as on the part and behalf of the said appellee We, the said commissioners, having first taken the oath annexed to the said commission, and also administered the oath also thereto annexed, to Daniel Arbman Johannesson, the person whom we have appointed as clerk to attend the execution of the said commission, as by the said commission is respectively required.

Jacob Hooglant, of the Helder, at present in the city of Amsterdam aforesaid, a witness of lawful age, being produced and sworn on the part and behalf of the apellants aforesaid, deposeth and saith: Deposition of Jacob Hooglant

First. In answer to the first interrogatory:

I know Mr. Vyfhuis only by corespondence, but I do not know in what line of business he was engaged in November, eighteen hundred and twenty-two, nor any thing else.

Second. In answer to the second interrogatory:

I know Captain Cunyngham, and have seen him at the Helder, as commander of the ship Virgin, at the same period, but did not know any thing of his business at Amsterdam.

Third. In answer to the third interrogatory:

I know Mr. Frederick C. Graf, but I do not know Mr. J. C. Delprat, and do not know their connexions.

Fourth In answer to the fourth interrogatory:

She was consigned to N. & J. & R. Vanstaphorst, or said to be, the time she arrived.

Fifth. In answer to the fifth interrogatory:

The ship Virgin did not proceed to Amsterdam, but remained in the New Deep: she was, the time she arrived, in bad condition, and in want of some repairs, sails, cables and cordage.

Sixth In answer to the sixth interrogatory:

I cannot ascertain this, as not having paid, in that respect, any particular attention.

Seventh. In answer to the seventh interrogatory:

I do not know any thing respecting a bottomry loan or contract.

Eighth. In answer to the eighth interrogatory:

I do not know any thing respecting this.

Ninth. In answer to the ninth interrogatory:

I do not know any thing respecting it.

Tenth. In answer to the tenth interrogatory:

I am not acquainted with those circumstances.

Eleventh. In answer to the eleventh interrogatory:

I am not acquainted with those circumstances.

Twelfth. In answer to the twelfth interrogatory:

I am not acquainted with those circumstances.

Thirteenth. In answer to the thirteenth interrogatory:

I cannot ascertain this, but the accounts I have paid by order of Captain Cunyngham, and I am repaid by Messrs. Vyfhuis & Co.

Fourteenth. In answer to the fourteenth interrogatory:

I have an account of disbursements against the ship Virgin, of three thousand nine hundred and thirty guilders and fourteen steivers, which was repaid me by Messrs. Vyfhuis and Co. by order of Captain Cunyngham.

Fifteenth. In answer to the fifteenth interrogatory:

I do not know the amount of the freight.

Lastly. In answer to the last interrogatory:

I do not recollect any other material circumstances.

J. HOOGLANT, *Witness.*

Cross examination of J. Hoglant.

And this deponent at the same time and place, being examined on the part of the appellee, on the cross interrogatories hereto annexed, deposeth and saith as follows:

First. In answer to the first cross interrogatory:

I do not know whether Mr. Vyfhuis advanced money on bottomry of the ship Virgin.

299

Second. In answer to the second cross interrogatory:
I am unacquainted with those circumstances.

J. HOOGLANT, *Witness.*

We certify that, on the day and year, and at the place herein before stated, we did take the deposition of the witness Jacob Hooglant, as herein before stated. Witness our hands and seals this second day of May, one thousand eight hundred and twenty-five.

JOHN W. PARKER, [SEAL.]
F. W. KARTHAUS, [SEAL.] } *Commissioners.*

Deposition of a witness produced, sworn, and examined, on the second day of May, eighteen hundred and twenty five, at the house of John Henry Zuver, notary public, residing in the city of Amsterdam, in the kingdom of the Nether ands, by virtue of a commission issuing out of the circuit court of the United States for the fourth circuit in and for the district of Maryland, to John Williams Parker and Frederick Wilhelm Karthaus, esquires, or either of them directed, for the examination of witnesses, in a cause of appeal now depending in said court between the ship Virgin and claimants, and Adam Vyfhuis, junior, as well on the part and behalf of the said appellants, as on the part and behalf of the said appellee. We, the said commissioners, having first taken the oath annexed to the said commission, and also administered the oath also thereto annexed to Daniel Arbman Johannesson, the person whom we have appointed as clerk to attend the execution of the said commission, as by the said commission is respectively required.

Deposition of Cornelis Abrahamzs.

Cornelis Abrahamzs, of the city of Amsterdam, aforesaid, (partner of Messrs. D'Arnaud & Co.) a witness of lawful age, being produced and sworn on the part and behalf of the appellants aforesaid, deposeth and saith:

First. In answer to the first interrogatory:
Adam Vyfhuis resided in and long before November, eighteen hundred and twenty-two, in Amsterdam, enjoyed of a good reputation, and is known as a man of very respectable connexions.

Second. In answer to the second interrogatory:
We know Captain John Cunyngham, that he was master of the ship Virgin, that he came from Baltimore, and that we were his brokers.

Third. In answer to the third interrogatory:
We do not know Frederick C. Graf or John C. Delprat, more than that they were established at Baltimore.

Fourth. In answer to the fourth interrogatory:
The Virgin was consigned to the house of Messrs. N. & J. & R. Vanstaphorst.

Fifth. In answer to the fifth interrogatory:
The Virgin laid in the New Deep; we were informed she wanted repairs.

Sixth. In answer to the sixth interrogatory:
Not having been in the New Deep, we cannot ascertain which sum was required for her repairs and further wants

Seventh. In answer to the seventh interrogatory:
We know a bottomry was negotiated between Captain Cunyngham and Mr. Vyfhuis.

Eighth. In answer to the eighth interrogatory:
Mr. Vyfhuis never was an agent of any house as far as we know.

Ninth. In answer to the ninth interrogatory:
We do not know.
Tenth. In answer to the tenth interrogatory:
We never heard.
Eleventh. In answer to the eleventh interrogatory:
They did not.
Twelfth. In answer to the twelfth interrogatory:
Adam Vyfhuis was never a clerk, or never employed, in the house of N. & J. & R. Vanstaphorst, and, as far as we know, did not want the support or protection of said house to lend the required sum on bottomry.
Thirteenth. In answer to the thirteenth interrogatory:
We suppose he was.
Fourteenth. In answer to the fourteenth interrogatory:
As we were the brokers of the Virgin, we were of course in the necessity of paying the expenses the ship incurred, and the money the Captain wanted for the same, which was repaid us by Mr. Vyfhuis.
Fifteenth. In answer to the fifteenth interrogatory:
The freight moneys were not by far sufficient to cover eight thousand guilders.
Lastly. In answer to the last interrogatory: No.

C. ABRAHAMZS, *Witness.*

And this deponent, at the same time and place, being examined on the part of the appellee, on the cross interrogatories hereto annexed, deposeth and saith as follows:

Cross examination of Cornelis Abrahamzs.

First. In answer to the first cross interrogatory:
We never asserted this.
Second. In answer to the second cross interrogatory:
We do not know any particulars thereof.

C. ABRAHAMZS, *Witness.*

We certify that on the day and year, and at the place, herein before stated, we did take the deposition of the witness Cornelis Abrahamzs, herein before stated. Witness our hands and seals this second day of May, one thousand eight hundred and twenty-five.

JOHN W. PARKER, [SEAL.]
F. W. KARTHAUS, [SEAL.] } *Com'rs.*

Deposition of a witness produced, sworn and examined, on the second day of May, eighteen hundred and twenty-five, at the house of John Henry Zilver, notary public, residing in the city of Amsterdam, in the kingdom of the Netherlands, by virtue of a commission issuing out of the circuit court of the United States for the fourth circuit in and for the district of Maryland, to John Williams Parker and Frederick Wilhelm Karthaus, esquires, or either of them directed, for the examination of witnesses in a cause of appeal now depending in said court between the ship Virgin and claimants, and Adam Vyfhuis, junior, as well on the part and behalf of the said appellants, as on the part and behalf of the said appellee. We, the said commissioners, having first taken the oath annexed to said commission, and also administered the oath also thereto annexed to Daniel Arbman Johannesson, the person whom we have appointed as clerk to attend the execution of the said commission, as by the said commission is respectively required.

Jan Hendrick Geers, of the city of Amsterdam aforesaid, a witness of lawful age, being produced and sworn on the part and behalf of the appellants aforesaid, deposeth and saith:

Deposition of Jan H. Geers.

First. In answer to the first interrogatory:

I know that Mr. Vyfhuis was a second-hand dealer in tobacco sometime ago, which has been discontinued. I do not know whether he resided in Amsterdam in the month of November, eighteen hundred and twenty-two, neither do I know whether his means enabled him to lend considerable sums of money on bottomry.

Second. In answer to the second interrogatory:

I know Captain Cunyngham at the aforesaid period: he told me that his consignees were making difficulties about the expenses, and, some time after, that it had been arranged by a bottomry.

Third. In answer to the third interrogatory:

I know Mr. Frederick C. Graf, of Baltimore, and I also know that he owned, with Mr. John C. Delprat, of Baltimore, the ship Virgin, at the aforesaid period of November, eighteen hundred and twenty-two, as, also, that Mr. Graf was engaged by Mr. Delprat to make consignments to the house of N. & J. & R. Vanstaphorst of this place, for which he was an agent. I have never heard of any other connexion between them.

Fourth. In answer to the fourth interrogatory:

I know that the ship Virgin was consigned to the house of N. & J. & R. Vanstaphorst.

Fifth. In answer to the fifth interrogatory:

The Virgin was not up to Amsterdam, and I have no knowledge of the condition she was in.

Sixth. In answer to the sixth interrogatory:

With referrence to the fifth interrogatory, I cannot give my opinion about the repairs she wanted.

Seventh. In answer to the seventh interrogatory:

I know that a bottomry had been taken, but, at the aforesaid period, I did not know that Mr. Vyfhuis had lent the money.

Eighth. In answer to the eighth interrogatory:

I have never received any information of this, and confirm my answer to the seventh interrogatory.

Ninth. In answer to the ninth interrogatory:

I supposed in November, eighteen hundred and twenty-two, that Messrs. N. & J. & R. Vanstaphorst furnished the money, but cannot positively say by whom it was actually advanced.

Tenth. In answer to the tenth interrogatory:

I cannot answer this in the affirmative.

Eleventh. In answer to the eleventh interrogatory:

Mr. Schimmelpennick, the senior partner of the house of N. & J. & R. Vanstaphorst, told me that the expenses of the ship Virgin had amounted to about eight thousand guilders, and that they would not be so foolish as to make such an expense for Delprat without securing themselves by a bottomry.

Twelfth. In answer to the twelfth interrogatory:

I have no knowledge of it: Mr. Vyfhuis, as I understood, was an intimate friend of Mr. Schimmelpennick.

Thirteenth. In answer to the thirteenth interrogatory:

I do not know any thing about Mr. Vyfhuis's situation.

Fourteenth. In answer to the fourteenth interrogatory:
I have had no occasion to know these particulars.
Fifteenth. In answer to the fifteenth interrogatory:
The freight of the ship Virgin amounted to one thousand one hundred and fifty-two pounds seventen shillings sterling. Mr. Graf calculated about one thousand dollars sufficient to pay the ship's expenses at Amsterdam.
Lastly In answer to the last interrogatory:
I remember myself that Mr. Schimmelpennick told me, in the month of August, eighteen hundred and twenty three, that, far from owing a balance to Mr. Delprat, they would be his creditors for about nineteen thousand guilders, and were making out his account, and that they could not admit Mr. Graf as part owner of the ship Virgin, as Mr. Delprat had always assumed the entire property of the same.

J. H. GEERS, *Witness.*

And this deponent, at the same time and place, being examined on the part of the appellee, on the cross interrogatories hereto annexed, deposeth and saith as follows:

Cross examination of J. H. Geers.

First. In answer to the first cross interrogatory:
I do not know by whom the money was advanced.
Second. In answer to the second cross interrogatory:
I know that Frederick C. Graf had a balance due him from N. & J. & R. Vanstaphorst, which was settled by arbitration, for the amount of four thousand five hundred guilders, and received by me for his account. In August, eighteen hundred and twenty-three, Mr. Schimmelpennick told me that the balance due them from Mr. Delprat, agreeable to an account then making out, would be about nineteen thousand guilders: the freight moneys of the Virgin had been credited Mr. Delprat.

J. H. GEERS.

We certify that on the day and year, and at the place herein before stated, we did take the deposition of the witness, Jan Hendrick Geers, as herein before stated. Witness our hands and seals this second day of May, one thousand eight hundred and twenty-five.

JOHN W. PARKER, [SEAL.]
F. W. KARTHAUS, [SEAL.] } *Com.*

Commissioners' return.

We, the undersigned commissioners, named and appointed in the annexed commission, do hereby certify to the honorable the judges of the circuit court of the United States for the fourth circuit in and for the district of Maryland, that, in obedience to the said commission, after having made the oath according to the terms of the form endorsed on the said commission, before John Henry Zilver, notary public, residing in the city of Amsterdam, we have executed the same by taking the depositions of the witnesses by us examined, namely, Jan Hendrick Geers, Cornelis Abramzs, (partner of Messrs. D'Arnaud & Co.) both of the city of Amsterdam aforesaid, and Jacob Hooglant, of the Helder, at present in Amsterdam. Witness our hands and seals this second day of May, in the year of our Lord one thousand eight hundred and twenty-five.

JOHN W. PARKER, [SEAL.]
F. W. KARTHAUS, [SEAL.] } *Commissioners.*

Notarial certificate.

I, John Henry Zilver, notary public, residing in the city of Amsterdam, in the kingdom of the Netherlands, do hereby certify that John Williams Parker and Frederick Wilhelm Karthaus, esquires, the commissioners named and appointed in the commission above mentioned, made their oath before me. Witness my hand and seal, this second day of May, in the year of our Lord one thousand eight hundred and twenty-five.

[SEAL.] J. H. ZILVER, *Notary.*

UNITED STATES OF AMERICA, } *sct.*
District and State of Maryland, }

2d deposition of Capt. John Cunyngham.

Be it remembered, that, on this sixth day of October, in the year of our Lord one thousand eight hundred and twenty-seven, at the city of Baltimore, before me, William H. Gatchell, a commissioner appointed by the circuit court of the United States for the district aforesaid, in the fourth circuit of the said United States, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," personally appeared John Cunyngham, a witness for the appellee, in a certain civil cause now depending in the circuit court of the said United States for the district of Maryland, wherein the ship Virgin and claimants are appellants, and Adam Vyfhuis, junior, is appellee. And the said witness being by me first carefully examined and cautioned, and sworn to testify the whole truth, makes oath, deposeth, and saith, that he was master of the ship Virgin, in the year 1822, on a voyage from Baltimore to Amsterdam, and back to Baltimore. Exhibit A, herewith filed, is the original letter of instructions received by deponent from Mr. John C. Delprat. In pursuance of this letter, deponent consigned the ship and cargo to N. & J. & R. Vanstaphorst, who, as such consignees, received all the freight that was payable on the said cargo at Amsterdam, and deponent received no part of said freight, nor any other supplies for the use of said ship, or otherwise, from the said N. & J. & R. Vanstaphorst. When the vessel was fitting out on said voyage deponent remarked to the owner, Mr. Delprat, that some of her sails, particularly her topsails, were out of order, and that she wanted a new cable; and Delprat replied that he could get whatever the ship wanted, cheaper at Amsterdam. Deponent was for three or four weeks endeavoring, but without success, to obtain from the said consignees the money necessary for the supplies and equipment of the Virgin, so as to put her in a situation to perform the voyage home. The long delay of the negotiation with the said consignees was owing to the absence of one of the partners of the House. They finally refused to furnish deponent with the necessary money, and he was obliged to borrow it from the appellee upon bottomry, as he has stated in a former deposition taken in this cause. Exhibit B, herewith filed, is a translation of the bottomry engagement, as the same was translated and read to him before he signed said bottomry engagement, the original remaining with the notary according to the laws of Holland. Deponent is about to proceed on a voyage to sea; his ship is already cleared out.

J. CUNYNGHAM.

UNITED STATES OF AMERICA, } sct.
District and State of Maryland, }

Certificate of the commissioner.

I, William H. Gatchell, a commissioner appointed by the circuit court of the United States for the district aforesaid, in the fourth circuit of the said United States, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that the reason for taking the deposition hereunto annexed, of John Cunyngham, is, that the said witness is about to proceed on a voyage to sea. I do further certify that due notice was given to the counsel of the adverse party of the time and place of taking the aforegoing deposition. I do further certify that I am not of counsel or attorney to either of the parties in said deposition mentioned, nor interested in the event thereof; that the said deposition was reduced to writing by me, and thereafter subscribed by the said deponent in my presence.

In testimony whereof, I have hereunto set my hand and seal, this sixth day of October, one thousand eight hundred and twenty-seven, at the city of Baltimore, in the State aforesaid.

WM H. GATCHELL, [SEAL.]
Com. Cir. Ct.

Exhibit A.

BALTIMORE, *30th July*, 1822.

Captain CUNINGHAM, *of the ship Virgin.*

Letter of instructions to Captain Cunyngham.

DEAR SIR: The ship Virgin, under your command, being ready for sea, I beg you to proceed in her to Amsterdam: on your arrival there, you will consign her to my friends N. & J. & R. Vanstaphorst. I have requested those gentlemen to discharge your ship with as much despatch as possible, and, if possible, to obtain a return freight to this port of at least one thousand dollars, or a freight to New York of $1,500, say fifteen hundred dollars. Should they not be able to accomplish this, you will then proceed with the ship to New Orleans, where you will find letters of instructions for your future proceedings. My friends in New Orleans are Messrs. Vincent Nolte & Co. I beg you to use the utmost economy in the disbursements that are to be made for the ship and owners. The extreme low rate of freights do not allow me to permit any expenses but such as are absolutely necessary. Your ship is insured at and from Baltimore to Amsterdam: this for your government, wishing you a speedy, pleasant, and prosperous voyage.

I remain your obd.
JOHN C. DELPRAT.

Exhibit B.

[*Translation from the French.*]

Bottomry bond.

Before Charles Abraham de Chausepie, doctor of laws, and his colleague, notaries public, residing at Amsterdam, appeared Mr. John Cunyngham, of Baltimore, in the United States of North America, captain of the frigate the Virgin, of the burthen of three hundred thirty-seven tons and eighty-nine-ninety-fifths, now laying in the New Deep, come from Baltimore, and intending to return thither:

Who acknowledged, by these presents, to be indebted to Messrs. Vyfhuis & Co. agents at Amsterdam, in the sum of three thousand two hundred dollars, amounting, at par, to eight thousand guilders Netherland currency, for a like sum. Mr. Adam Vyfhuis, junior, of Amsterdam, Leidsche straat, agent, carrying on busines, under the said firm of Vyfhuis and Co.. licensed as such for this instant year, by an act delivered on the fifteenth April, No. 2895, exhibited to us the notaries, who was present and accepted, hath lent for the account of his said firm on bottomry, and at the interest of ten per centum on the hull and keel of the said ship Virgin, to Mr. Cunyngham, in order to enable him to pay the expenses of the repairs, purchase of provisions, and other expenses, he hath been obliged to lay out.

The said loan will take place for the voyage. which Mr. Cunyngham intends to undertake with the said ship from the New Deep to Baltimore, for which place he is ready to depart with the first fair wind.

The said Captain Cunyngham promises to return to Messrs. Vyfhuis and Co., or to their order, eight days after the arrival of said ship at Baltimore, the above mentioned sum of three thousand two hundred dollars, or so eight thousand guilders, Dutch, together with the maritime profit agreed on at the rate of ten per centum, making a sum of dollars three thousand five hundred twenty, or so, eight thousand eight hundred guilders, Dutch.

In consequence thereof the said Captain Cunyngham binds and pledges to the said lenders the said ship the Virgin, her tackle, and appurtenances, as well for the principal, as also for the interest of the sum so lent, according to law.

And in case the said ship might wreck on her intended voyage, the said captain authorizes, for as much as need be, the aforesaid Messrs. Vyfhuis & Co. to take possession of all and what can be saved of her, and to proceed to the sale thereof, as also to receive the amount of the same in payment either of the whole or of part of the debt now contracted, all under obligation as above, and renouncing all exceptions and means which could diminish or attenuate the effect of these presents, choosing domicile in this city in the office of the undersigned notary.

And as Captain Cunyngham is not sufficiently skilled in the French tongue to understand the contents of these presents without interpretation, we, the notaries, have requested Mr. Charles Godefroi Reichelt, of this city, Nieuve Zyds Achterburgwal, near the Molsteeg, sworn interpreter, to interpret these presents to the said Captain from the French into the English, which request the said Mr. Reichelt, who appeared to that end before us, hath complied with.

Done and passed at Amsterdam, in the office, the twelfth November, 1822, and Messrs. Cunyngham and Vyfhius have, with the translator and the notaries, undersigned the minute which was previously read, and remains in the possession of De Chausepie.

(Signed) J. CUNYNGHAM,
A. VYFHUIS, Jr.
C. G. REICHELT,
C. A. DE CHAUSEPIE,
B. BLOMMAN JOHZ, *Notary*

[*Follows the registry:*]

Registered at Amsterdam the 12th November, 1822, vol. 7, fo. 57, ro. c. 2 and 3.

Received with the augmentations 55 guilders 4½ cents.

DE KANTER.

A true copy, agreeing with the minute which remains in the possession of the undersigned notary.

(Signed) C. A. DE CHAUSEPIE,
Notary Public.

[*On the engrossed one was written:*]

Registered in the registry of the Tribunal of First Instance, performing the functions of the Tribunal of Commerce, at Amsterdam, the thirteenth November, 1822.

(Signed) A. UITENHAGEN DE MIST,
Registrar.

(Signed) C. A. DE CHAUSEPIE.

The undersigned notaries public, residing at Amsterdam, certify that the firm above is that of C. A. de Chausepie, doctor of laws, notary public, residing at Amsterdam, and that faith ought to be given to it, as well in court as thereout.

In testimony whereof, we have undersigned these presents. Amsterdam, the 15th November, 1822.

[SEAL.] (Signed) JAN. CHR. MEYER, *Notary.*
B. A. VAN HOUTEN, *Notary.*

Faithfully translated. Amsterdam, the 15th November, 1822.
JOANNES VERGEEL, *Luc. Sont.*
Sworn Translator.

The Claimants of the SHIP VIRGIN. *vs.* ADAM VYFHUIS, jr. } *May term*, 1828. *Interlocutory Decree.*

Interlocutory order.

The ship Virgin sailed from Baltimore in August, 1822, and arrived at Amsterdam on the 12th October following. During her stay there, which was for more than 30 days, the Captain incurred debts to a large amount for repairs and supplies, as particularized in the exhibits B and C, which, with other disbursements at the Helder, amount nearly to 8,000 guilders. On the 12th November, Captain Cunyngham executed a bottomry bond to Vyfhuis & Co., pledging the ship Virgin for a payment of 8,000 guilders, the sum borrowed, with marine interest of ten per cent.

The question to be decided by the court is, whether, under all the circumstances of the case, the bottomry bond can be sustained as a valid hypothecation of the ship?

Those who supply a ship with necessaries, have a treble security. 1st. The person of the master; 2d. The specific ship under certain circumstances; and, 3d. The personal security of the owners. The master is per-

sonally liable as making the contract. The owners are liable in consequence of the act of the master, who is their servant. The ship Virgin and cargo were consigned to Messrs. Vanstaphorst, the vessel was owned by John C. Delprat and Frederick C. Graff, the former ¾ and the latter ¼.

The consignment was accepted, and the freight received by the consignees, but they refused to make any advances on account of the ship.

The owners are bound to the performance of all lawful contracts made by the master relative to the usual employment of the ship, and the repairs and other necessaries furnished for her use. This rule is established as well upon the implied assent of the owners, as with a view to the convenience of the commercial world. To make a bottomry bond, executed by the master, a valid hypothecation of the ship, it must be shown by the creditor that the master acted within the scope of his authority, or, in other words, it must be shown that the advances were made for repairs and supplies necessary for effectuating the objects of the voyage, or the safety and security of the ship; and no presumption should arise that such repairs and supplies could be procured upon the credit of the owner, independent of such hypothecation.

It should appear that the master could not money by exchange, or any other means. It is essential that no other means of procuring funds should exist. It cannot be taken to secure a pre-existing debt. The necessity must be clearly made out to justify the hypothecation by the master. If the master have sufficient funds of the owner within his control, or can procure them upon the general credit of the owner, he is not at liberty to subject the ship to the expensive and disadvantageous lien of a bottomry contract. Material men, and others who furnish supplies to a foreign ship, have a claim on the ship, and may proceed in the admiralty to enforce that right. The freight was the proper fund out of which the necessary repairs and supplies should have been procured. The consignees refused to pay it to the Captain, but retained it under an allegation that Delprat, the owner, was their debtor to a large amount.

It does not appear in the record that any effort was made by the Captain to compel payment of the freight, by withholding the cargo or otherwise. He ought at least to have made the attempt.

The articles charged in the exhibits B and C were furnished from an early day in October, until the 7th and 8th November respectively. On the 12th November, the bottomry contract was entered into: previous to that day the Captain had not seen or conversed with Vyfhuis. The contract had been negotiated through the agency of brokers. It is admitted by the Captain that all the articles in the exhibits, procured prior to the first of November, were furnished on his own responsibility, and the inference is fair that the whole were furnished on the credit of the Captain or owners, or both. *Hooglant*, who furnished at least one half of the whole, on his examination as a witness, declares that he knew nothing of the bottomry contract. The articles supplied by D'Arnaud & Co. appear to have been furnished in like manner. Captain Cunyngham states in his testimony that he did not endeavor to obtain money on loan, otherwise than on bottomry, from any persons except the Messrs. Vanstaphorst's, whom he knew to be the friends of Delprat. It does not appear that he made any effort to obtain it on the credit of the owner, and there is no evidence that the materia men even menaced to file a libel to establish a lien on the vessel.

Comparing the principles established by the decision of the courts of the United States in relation to loans on bottomry, with the evidence in this cause, it is the opinion of the court that the strict necessity required by law to justify a contract on bottomry, did not exist in the case of the Virgin, and that the contract made by Captain Cunyngham with Vyfhuis & Co. cannot be sustained as a valid hypothecation of the ship.

The Virgin, by consent of parties, was appraised and delivered to Mr. Graf, a part owner, on stipulation. Her value, according to the appraisment, is $1,800, and it is stated that, on a libel filed against her for seamen's wages, $900 were awarded to them.

This court, upon equitable principles, may decree the amount of the necessary repairs and supplies to be charged against the owner. It must be shown that the advances were made for repairs and supplies necessary for effectuating the objects of the voyage, or for the safety and security of the ship in the course of the usual employment of her. The owners, by their appointment of the Captain, hold him forth to the public as a person worthy of trust and confidence, and are therefore liable for his acts while acting within the scope of his authority. It has been contended in argument that there is strong ground for the inference that Vanstaphorst & Co. were the real lenders of the money through their agent Vyfhuis. The testimony in this respect is defective, and does not establish the fact, although it must be admitted that there is some room for the presumption. The charges made by Captain Cunyngham, which compose the sum for which the ship was hypothecated, being of various kinds, some of which it is admitted were necessary, and others are denied to be so. It is referred to the clerk of this court, calling to his assistance two merchants of skill and respectability to examine the accounts, and, in their statement, to distinguish the advances for repairs and supplies which were absolutely necessary, and made in the usual employment of the ship, from those of a different character, and report the same to this court preparatory to a final sentence, and open to objections by either party.

The SHIP VIRGIN and Claimants, Appelants, *vs.* ADAM VYFHUIS, Jr. Appellee. } *In the Circuit Court of the United States for the Fourth Circuit in and for the Maryland District.*

To the honorable the Circuit Court aforesaid:

1st report of the clerk under the interlocutory order of court.

The undersigned, Philip Moore, clerk of said court, and David Winchester and Henry Thompson, merchants of the city of Baltimore, acting as assistants of said Philip Moore, and under his appointment, in the examination and determination herein after mentioned, beg leave to report to the court, that, in pursuance of the court's interlocutory decree in this cause pronounced, on the seventh day of June, eighteen hundred and twenty eight, they proceeded to examine the expenditures for and concerning the ship Virgin, made at Amsterdam on her voyage in the proceedings in this cause mentioned, with a view to ascertain the advances for repairs and supplies which were absolutely necessary, and made in the course of the usual employment of the ship, and also to distinguish those advances not thus necessary. The undersigned, as the result of their examination, beg leave to report that the

following expenditures were, in the opinion of the undersigned, absolutely necessary, within the terms and meaning of the ascertainment required by the said decree, "in the course of the usual employment of the said ship;" that is to say:

The cost of articles mentioned in the exhibit of moneys advanced by D'Arnaud & Co., and Hooglant and Vyfhuis, to the Captain	f. 913 19
The cost of articles mentioned in exhibit B, except 350 guilders advanced in cash to the Captain - - - -	3,580 14
The cost of articles mentioned in exhibit C, except f. 300, advanced in cash to the Captain - - - -	2,755 18
	f. 7,250 11
Add 10 per cent.	725
	f. 7,975 11

All which is respectfully submitted. Witness our hands, this 26th day of November, 1828.

PHILIP MOORE,
D. WINCHESTER,
HENRY THOMPSON.

Exhibit O.

Ship Virgin's disbursements at Amsterdam by J. Cunyngham.

Oct. 14,	To carriage hire to Amsterdam and back	67		Captain Cunyngham's account referred to in the clerk's report, the exceptions, and the agreement.
	Tolls and expenses on the road -	6	8	
18,	Glazing sky light, 3 panes - -	1		
19,	D. Lort, 6 days' watch, discharging -	9		
	J. Carn, do do - -	9		
	C. Low, do do - -	9		
	K. Boos, do do - -	9		
20,	T. W. Christian, 2d mate, his wages as per his acc't herewith - -	90	1	
22,	Cabin soup ladle - - - -	1	8	
23,	K. Boos, 4 days' watch - - -	6		
	T. Carn, do - - -	6		
	D. Seiver do - - -	6		
24,	C. Baker for sweeping and finding the small bower anchor, when cable and buoy rope parted in the Texel Roads, and for bringing it along side, as per his agreement and receipt - -	98		
25,	Fresh herrings for all hands - -	1		
	Cover for one of the coppers, ladle, repairing lanterns and wash basin - -	7		
26,	K. Boos, 3 days' watch - - -	5	8	
	J. Kunk, 3 do - - -	5	8	
	C. Baker, 3 do - - -	5	8	
	G. Tensen, 3 do - - -	5	8	
27,	A spar for the hoging machine - -	1		

Nov.	8,	C. Baker, 10 days' watch - -	15	
		C. Boots 5¾ do - - -	8	12
		E. Forman 4 do - - -	6	
		T. Curtin 4 do - - -	6	
	10,	10 measures of turf - - -	6	12
		10 brooms - - -	1	
	11,	Wl'd Derick, for 371 *lb.* cordage a 4 *st.* per *lb.* - - - - -	74	4
		3 bushels onions - - - -	2	16
		Carriage hire 31st Oct. to Amsterdam -	35	
		Tolls and expenses on the road - -	6	10
	13,	Carriage hire from Amsterdam to the ship, with tolls and expenses - - -	48	
		My boarding at Amsterdam first and second time - - - -	70	10
		To a brass compass, and repairing 3 do -	18	
		Paid clearing ship at the New Deep -	7	4
		Lamp wick - - - -	1	
		F. Stall for 145 lb. cordage, a 4½ *st.* -	32	12
		Medicine for the chest - - -	10	
		Repairing and lengthening stove pipe -	2	
		3 water casks - - - -	36	
		Postage of a letter ship's acc't - -		6
Nov.	28,	Advances to G. Carr before desertion -	12	9
	29,	10 measures turf - - - -	7	
Dec.	2,	T. Kerkon, 1 barrel beef - - -	27	10
	3,	Do 1 do pork - - -	26	
	"	Baker for bread, per bill - - -	17	8
	"	24 cabbages - - - -	1	4
		5 bushels potatoes - - -	3	10
	6,	56 lb. mutton - - - -	8	8
	8,	Vegetables and bread - - -	1	18
	12,	Butchers' 2d bill - - - -	43	13
	14,	Extra boat hire out of the New Deep -	21	10
		For keeping the water up from 13th Nov. to 14th December - - -	7	14
			f.913	19

BALTIMORE, 14 *March*, 1823.

J. CUNYNGHAM.

The within was offered in evidence, and proved by Captain Cunyngham.

G. H. STEWART,
Proctor for Appellant.

BALTIMORE, *6th September*, 1822.

Mr. Graf's letter to Captain Cunyngham, 6th Sept. 1822.

DEAR SIR: I received your Cape letter of the 11th ultimo, and regretted you had such a tedious time down the Bay, but was pleased to observe that Frederick conducted himself satisfactorily. I paid Mr. Delprat's draft in your favor for $916

67, on the 4th instant, at the Marine Bank, and he executed on that day a bill of sale for one-third of the ship Virgin to me. I am very sorry to say this gentleman's circumstances have recently changed much for the worse, and I apprehend he will not be able to maintain himself. You remember have gave me an order on Messrs. N. & J. & R. Vanstaphorst to pay me one thousand dollars out of the Virgin's freight: this letter I returned to him, and he afterwards gave me a bill on the house for $2,500, dated 15th ult. which I endorsed and sold. I am, however, apprehensive they will protest his bills, although he is their acknowledged and accredited agent, and request you to inquire particularly into the subject, and induce them to pay this bill, (as they are in justice bound to do,) and another small one for f.575 given me on the 1st ultimo, by Mr. Delprat, on account of consignments I made Messrs. Vanstaphorsts per Virgin. I am very uneasy about this business, and beg you to take care of my interest. I made the house also a consignment of 155 tierces rice, per Mandarin, for which I have received no payment yet from Mr. Delprat, to whose credit I ordered the proceeds to be placed. If you can draw from 5 to 600 dollars more from Messrs. Vanstaphorsts than you want for the use of the ship, do so, and you can account the same to me on your return. As you will have to go to New Orleans after a freight, you can easily make this a plea for your taking more money up than usual or customary. I want to save myself as much as possible, and, therefore, you draw as much money as you can get. We will settle matters between us hereafter. I understand Mr. Delprat has made over his two-thirds of the Virgin to Mr. John Strawbridge, of Philadelphia, but you proceed from Amsterdam to New Orleans under the instructions received at your departure, unless you make a freight of $1,000 to this port. You will be surprised to hear that our great tobacco shipper, Mr. Bell Hodges, has also failed about three weeks ago. Business from this place dwindles away to almost nothing, and freights are exceedingly dull; therefore, you will not return to this port unless you make $1,000.

Mrs. Cunyngham enjoys good health. There has been some little sickness at the Point, and Capt. Chase lost two daughters, but it is now very healthy again. Expecting to hear from in a few weeks, I remain sincerely and truly,

Your friend and servant,

FREDERICK C. GRAF.

Capt. JOHN CUNYNGHAM, *ship Virgin.*

I enclose you a certificate from our Custom-house of my being one-third owner of the ship Virgin.

W.

(*Certificate of Graf's ownership.*)

[*Duplicate.*]

COLLECTOR'S OFFICE, BALTIMORE, *Sept.* 7, 1822.

I hereby certify that Mr. Frederick C. Graf deposited in this office, on the 5th inst., a bill of sale from John C. Delprat, in favor of the said F. C. Graf, for one undivided third part of the ship Virgin, of Baltimore, executed the 4th inst.

Certificate of Graf's ownership.

J. H. McCULLOCH, JR. *D. C.*

Admitted in evidence.

CHARLES F. MAYER.

(Bill of Lading, A.)

Bill of lading, A.

Shipped in good order, and well conditioned, by John C. Delprat, in and upon the good ship called the Virgin, whereof is master for the present voyage, J. Cunyngham, and now riding at anchor in the harbor of Baltimore, and bound for Amsterdam, to say:

C & D, 1 c 20
S, 1 c 20
40 bales.

Forty bales upland cotton, being marked and numbered as in the margin, and are to be delivered in like good order, and well conditioned, at the aforesaid port of Amsterdam, (the dangers of the seas only excepted) unto Messrs. N. & J. & R. Vanstaphorst, or to their assigns, he or they paying freight for the said goods one penny, stg pr. lb. and 5 p. c. primage. In witness whereof, the master or purser of the said hath affirmed to four bills of lading, all of this tenor and date, one of which bills being accomplished, the others to stand void. Dated Baltimore, 23d July, 1822.

J. CUNYNGHAM.

Admitted to be read in evidence.

CHARLES F. MAYER.

The property within mentioned belonged to J. C. Delprat.

(Bill of Lading, B.)

Bill of lading B.

Shipped in good order, and well conditioned, by John C. Delprat, in and upon the good ship called the Virgin, whereof is master for the present voyage, J. Cunyngham, and now riding at anchor in the harbor of Baltimore, and bound for Amsterdam, to say: Thirty-six tons nine cwt. of logwood, being marked and numbered as in the margin, and are to be delivered in like good order, and well conditioned, at the aforesaid port of Amsterdam, (the dangers of the seas only excepted) unto Messrs. N. & J. & R. Vanstaphorst, or to their assigns, he or they paying freight for the said goods thirty shillings stg. per ton, and 5 p. c. primage. In witness whereof, the master or purser of the said ship hath affirmed to four bills of lading all of this tenor and date, one of which bills being accomplished, the other to stand void. Dated Baltimore 23d July, 1822.

Weight unknown to J. Cunyngham.

Admitted to be read in evidence.

CHARLES F. MAYER.

The property within mentioned was J. C. Delprat's.

(Bill of Lading, C.)

Bill of lading, C.

Shipped in good order and well conditioned, by Frederick C. Graf, in and upon the good ship called the Virgin, whereof is master for this present voyage, John Cunyngham, and now riding at anchor in this harbor, and bound for Amsterdam, to say: twenty hogsheads Maryland tobacco, being marked and numbered as in the

G.
No. 1 to 20.

margin, and are to be delivered in like good order, and well conditioned at the aforesaid port of Amsterdam, (the dangers of the seas only excepted) unto Messrs. Karthaus, Heis-

enclever & Co., or to their assigns, he or they paying freight for the said goods, forty-five shillings stg. aud 5 per c. primage per hogshead. In witness whereof, the master or purser of the said ship hath affirmed to four bills of lading, all of this tenor and date, one of which bills being accomplished, the other to stand void. Dated Baltimore, July 24th, 1822.

J. CUNYNGHAM.

(Bill of Lading, D.)

Bill of lading, D.

Shipped in good order, and well conditioned, by John C. Delprat, in and upon the good ship called the Virgin, whereof is master for this present voyage, J. Cunyngham, and now riding at anchor in the harbor of Baltimore, and bound for Amsterdam, to say: One hundred and fifty-seven hhds. Md. tobacco, being marked and numbered as in the margin, and are to be delivered in like good order and well conditioned, at the aforesaid port of Amsterdam, (the dangers of the seas only excepted) unto Messrs. N. & J. & R. Vanstaphorst, or to their assigns, he or they paying freight for the said goods forty-five shillings, stg per hhd. and 5 p. c. primage. In witness whereof, the master or purser of the said ship hath affirmed to four bills of lading all of this tenor and date, one of which bills being accomplished, the other to stand void. Dated Baltimore, 26th July, 1822.

T. 1 c. 48
K. 1 c. 50
D. 1 c. 50
H. 1 c. 9

J. CUNYNGHAM.

Admitted to be read in evidence.

CHARLES F. MAYER.

The property within mentioned was J. C. Delprat's.

(Bill of Lading, E.)

Bill of lading, E.

Shipped in good order, and well conditioned, by John C. Delprat, in and upon the good ship called Virgin, whereof is master for the present voyage, J. Cunyngham, and now riding at anchor in the harbor of Baltimore, and bound for Amsterdam, to say: One hundred sixty-two bales cotton, being marked and numbered as in the margin, and are to be delivered in like good order, and well conditioned, at the aforesaid port of Amsterdam, (the dangers of the seas only excepted) unto Messrs. N. & J. & R. Vanstaphorst, or to their assigns, he or they paying freight for the said goods, one penny stg. p. hhd. with 5 p. c. primage. In witness whereof, the master or purser of the said ship hath affirmed to four bills of lading all of this tenor and date, one of which bills being accomplished, the others to stand void. Dated Baltimore, July 29th, 1822.

W. McK. 62 bales.
K. 13
R. 52
S. S. E. 8
W. 27
162

J. CUNYNGHAM.

Admitted to be read in evidence.

CHARLES F. MAYER.

The property within mentioned was J. C. Delprat's.

(Bill of Lading, F.)

Bill of lading, F.

Shipped in good order and well conditioned, by J. P. Krafft, in and upon the good ship called the Virgin, whereof is master for the present voyage, J. Cunyngham, and now riding at

anchor in the harbor of Baltimore, and bound for Amsterdam, to say: Fifty hhds. Md. tobacco, being marked and numbered as in the margin, and are to be delivered in like good order, and well conditioned, at the aforesaid port of Amsterdam, (the dangers of the seas only excepted) unto Messrs. N. & J & R. Vanstaphorst, or to their assigns, they paying freight for the said goods, forty-five shillings stg. per hhd. and 5 p. c. primage. In witness whereof, the master or purser of the said ship hath affirmed to four bills of lading, all of this tenor and date, one of which bills being accomplished, the other to stand void. Dated Baltimore, July 26th, 1822.

F. No. 1 c. 50
50 hhds. c. 45 f.
£ 112 10
Prim. 5 p. c. 5 12 6
Ster. £ 118 2 6

J. CUNYNGHAM.

Admitted in evidence.

CHARLES F. MAYER.

It is admitted that the freight stipulated by the bills of lading marked A, B, C, D, E, amounted in the whole to five thousand dollars.

CHARLES F. MAYER.
Proctor for Vyfhuis.

S.

Statement of that part of the cargo on board not J. C. Delprat's.

20 hhds. tobacco, shipped by Fred'k C. Graf, per ship Virgin, and consigned to Karthaus, Hassenclever & Co.
50 do shipped by J. P. Krafft, per do., and consigned by him to N. & J. & R. Vanstaphorst.
*30 do do being J. P. Kraft's, one third of 90 hhds., shipped by J. C. Delprat, and consigned to Vanstaphorsts.
*30 do do., being Fred'k C Graf's one third of 90 hhds., shipped by Delprat on our respective accounts.

130 hhds. tobacco a 45 f. steg. per hhd. - - -		£292 10
Primage 5 p. c. -		14 12
		£307 02

Equal to about $1,500, being the freight of goods, not the property of Delprat.

BALTIMORE, 14*th September*, 1822.

Captain JOHN CUNYNGHAM:

Letter from F. C. Graf to Captain Cunyngham, 14th Sept. 1822.

DEAR SIR: I wrote you on the 7th, per ship Mary, via Rotterdam, advising you of my having paid Mr. Delprat's draft in your favor, at maturity. Mr. C. had lodged it in bank. It is with concern I have to inform you that Mr. Delprat failed on the 6th inst. but executed a bill of sale of one-third of the Virgin in my favor on the 4th, whereof I have sent the collector's certificate to my friends Messrs. Van Enst and Dyk. Mr. Delprat gave me a bill on the 15th ult. for cf. 2,500 on Messrs. N. & J. & R. Vanstaphorst on acc't

*These hogsheads were shipped in the name of Delprat: their proceeds have been accounted for by Messrs. Vanstaphorsts to Frederick C. Graf and J. P. Kraaft. C. F. M.

of my ½ of her freight, but as they have protested some of his bills already, I am apprehensive they will protest this also. I request you to make inquiry about it, and prevail on them to honor the bill. As freights are very dull here, it is my wish you should proceed from Amsterdam to New Orleans, unless you get a freight of $1,000 to this port, and take up 5 or $600 extra, which Messrs. Vanstaphorsts cannot refuse to give you, since you most probably will go to New Orleans, where some funds in hand will be very desirable. We will understand ourselves about these funds on your return here or at New Orleans. Write me what you intend to do, that I can make insurance, for the ship is only insured out to Amsterdam.

Yours truly,

FRED'K C. GRAF.

Capt'n JOHN CUNYNGHAM,
of ship Virgin.

AMSTERDAM, *3d November*, 1822.

Mr. F. C. GRAFF:

Capt. Cunyngham's letter to F. C. Graff, 3d Nov. 1822.

SIR: I have received your letters of the 6th and 14th Septr. and I observed the contents attentively. In that of the 6th Septr., you say there is enclosed a certificate from the Collector of your being ½d owner: I have already wrote you that no such paper was enclosed, but it is of no consequence with regard to the future proceedings of the ship. I have consulted with Zimmerman & Geer, with Karthaus & Co., (Mr. Karthaus is a warm friend of yours.) Their opinions, as well as of others, also my own, is, as the ship is no longer Mr. Delprat's, and the register cannot be altered here, no legal document of our custom-house, from the former owner, appearing, it is my bounden duty to return to Baltimore with the ship. The ship is now ready, but as yet Messrs. Vanstaphorsts has not decided about furnishing me with funds to get the ship away. This is Sunday; they have promised an answer on Wednesday. If they do not find me funds, I then must bottomry. I have again mentioned to them your bill; they, not in a pleasing manner, said the bill had been properly disposed of. They appear to be much displeased with Mr. Delprat. In my last I sent two small accounts for your son: believe me, sir, if I had not lost some money lately, and commanding the Virgin on the lowest terms, lower, indeed, than any out of Baltimore in the same trade, I should taken no notice of the little expense that Frederick caused. He has left town with a gentleman who conducts him to a place where he meets his uncle. I would thank you to let my wife know the ship is coming home. As to insuring the ship, as I rather suppose I shall be obliged to bottomry, the holder of the bond will, of course, insure the ship. I have mentioned, in a former letter to you, the astonishing difference of the ship sailing without copper; that, indeed, I never wish again to sail in her on a wooden bottom, although she is perfectly tight, and as strong as a ship can be, and one of the very best of seaboats, still I would decline the sailing in her again on wood.

I remain, sir, yours, respectfully,

J. CUNYNGHAM.

This letter is admitted to be in the handwriting of J. Cunyngham, late master of the ship Virgin. 21st May, 1828.

CHARLES F. MAYER,
Proctor for Vyfhuis.

(Exceptions to the Clerk's first Report.)

SHIP VIRGIN and Claimants, *vs.* ADAM VYFHUIS, jr. } *In the Circuit Court of the United States for the Fourth Circuit.*

Appeal from the District Court of the United States for the Maryland District.

The appellants in this cause beg leave to file the following exceptions to the report of Philip Moore, (clerk of this court.) David Winchester, and Henry Thompson, filed on the 6th December, 1828:

1st. Appellants object to the said Clerk having called to his assistance, in making said report, two merchants, who, though highly respectable, have no practical experience in the charges and disbursements of vessels at the port of Amsterdam; neither the said David Winchester nor Henry Thompson being the owners of vessels sailing to that port, or being, or having been, interested in vessels employed in that voyage.

2d Appellants object to the allowance of ten per cent., that is to say, the sum of seven hundred and fifty guilders allowed in said report, in addition to the sum of seven thousand two hundred and fifty guilders allowed for the expenses and disbursements, (that is to say, for the repairs and supplies of said ship.)

3d. Appellants object to the allowance made in said report for repairs and supplies of the ship Virgin, as being enormous, and as being at variance with the testimony of James Wilson, and other respectable owners of vessels sailing to Amsterdam, who were examined on the trial of this cause, and who proved twenty-five hundred to three thousand guilders was an ample allowance for the disbursements of such a ship as the Virgin, at Amsterdam, in an ordinary voyage.

4th. Appellants object to the said report having allowed sundry items charged for repairs and supplies of the ship Virgin, which items were not absolutely necessary, under the circumstances of the ship, for effectuating the object of the voyage contemplated, or for the safety and security of the ship in the course of the usual employment of her; which items are the following, to wit:

Charged in Exhibit, A.

Carriage hire to Amsterdam and back, and expenses on the road	f.73	8
4 laborers for discharging inward cargo - - - - -	36	
3 do. do. do. do. - - - -	18	
4 do. do. do. do. - - - -	21	12
Carriage hire to Amsterdam, and expenses on the road - -	41	10
Carriage hire from Amsterdam to the ship, and expenses on the road - - - - - - - -	48	
Capt. Cunyngham's board in Amsterdam - - - - -	70	10
	f.309	

Charges in Exhibit, B.

Carriage-hire to Alkmaar - - - - -	f.18	
Attending on discharging the cargo - - - -	32	
Custom-house, on sealing the lighters - - - -	53	11

Cooperage and repairing tobacco hhds., &c.	f. 45	15
Gin, wine, and sugar	124	11
Clothing for officers and the ship's crew	676	5
Shoemaker, for shoes to ditto	135	8
Groceries for the people's use	40	16
Hooglant's commission, etc.	100	7
	1,126	13

Charges in Exhibit, C.

For 8 lighters carrying the cargo from New Deep to Amsterdam	f 452	6
Attending the discharge of the lighters	71	13
In and outward tonnage money, f. 761 18, but, as the object of the voyage was not accomplished, only one-half can be allowed	380	19
Acquitting the lighter, passports relating to the inward cargo	12	
D'Arnaud & Co's. commission	50	
	966	18

5. The appellants also object to all the foregoing items, because they were not necessary for effectuating the object of the voyage of the ship, contemplated on her leaving Amsterdam, (which was a voyage from Amsterdam to New Orleans,) and were not necessary for the safety and security of the vessel whilst she remained at Amsterdam; neither were any of the repairs and supplies charged to the ship necessary or proper, if she had remained in Amsterdam, instead of sailing on a voyage not authorized.

R. B. TANEY,
GEO. H. STEUART,
For Appellants.

The VIRGIN, GRAF, and DELPRAT, Respondents, *vs.* ADAM VIFHUIS, jr. } *Filed 5th May*, 1830.

2d interlocutory order.

The counsel, in this case, in support of the exceptions to the report made in pursuance of the interlocutory order, have re-argued the whole case. The counsel for the owners contend that, as this court decreed against the validity of the contract on bottomry, the case is at an end; that the lender on bottomry having no claim against the personal responsibility of the owners, is redress in this suit.

The argument is, that the proceeding being altogether *in rem*, and this court having decided against the validity of the hypothecation, the cause is at an end; that if Vyfhuis ever had any remedy in *personam* against the owners of the ship Virginin the court of admiralty, he should have pursued it in a distinct and seperate libel, as a distinct and seperate remedy.

The libel, after seeking redress under the bottomry loan, concludes by praying the court *to pass such further decree in the premises as shall be deemed adequate and just*. It is the opinion of the court that if the owners are personally responsible, the libellant is entitled to redress under

the general prayer, and that he ought not to be required to institute a distinct and seperate libel in order to obtain relief. Having jurisdiction of the principal question, this court will proceed to make such final decree as the justice and equity of the case may require

The counsel on either side cites, generally, the same authorities. I have not succeeded in finding a case precisely similar, in all its circumstances, to that under consideration. Some of the authorities cited seemingly contradict themselves. Judge Peters in his admiralty decisions, (p. 95) says "the right to proceed *in rem*, does not exclude the remedy *in personam*, though it is taken frequently in preference, for the greater security. In common law courts, as in the admiralty, a party may pursue several remedies, although he can have but one satisfaction." In vol. 2 p. 305, he says that "an hypothecation bond cannot be given as a *double security*, running along with, and in, and of, a personal responsibility. The one excludes the other, and they cannot exist together." Yet he decides, in a case of bottomry, that the owners should pay for repairs. This seeming contradiction is susceptible of explanation. Of this hereafter. Haggard, vol. 1, p. 13, 14, "I apprehend that the owners are always bound to a certain extent—to the extent of their property in the ship. But this court proceeding upon principles of general equity, does not hold that a bottomry bond bad in one part, vitiates the rest." Again, p. 176, "one objection (to the bond) is that it binds the owners personally, as well as the ship and freight, which it cannot do. That is held in this court to be no objection to the efficacy of what it is admitted it can do. Here we do not take this bond into *toto*, as is done in other systems of law, and reject it as unsound in the whole, if vicious in any part. But we seperate the parts, reject the vicious, and respect the efficacy of those which are entitled to operate." Judge Winchester (see 1 Peter. p. 238,) says "the cause being a maritime cause, the court has a jurisdiction over his person as well as over the ship. The jurisdiction must in its nature be complete; it cannot be confined to one of the remedies on a contract, when the contract itself is within its cognizance." The true distinction is this: the lender on bottomry is not entitled to the benefit of the hypothecation, and to redress also from the owners. In other words, if the hypothecation is upheld, and the vessel should not produce, on sale, a sum sufficient to reimburse the lender, his remedy for the balance is gone; he has then has no claim on the owners. He is not entitled to redress or compensation from both sources. But if the hypothecation be adjudged invalid, he may proceed against the owners, unless, from some peculiarity in the circumstances of the case, he is precluded. This construction of the law reconciles the seeming contradictions before mentioned. Hence, the reason of Judge Peters' decision in the case of the ship America, before recited, having decided against the validity of the hypothecation, he decided in favor of the claim against the owners. In the case of Samson against Bragington, 1 Vez. 443, the owners were decreed to be liable, although the vessel was well hypothecated; the only question was whether the owners were liable. The same doctrine is maintained in Abbot, 125. The owners were held liable although the ship was well hypothecated: as the vessel was captured on the return voyage, the lender could not proceed against her. A decision to the same effect was made in the case of the Mary, which had been hypothecated, and was lost on her return from Jamaica to Bristol; the respondents were held liable. Brown's P. C. 288. It is needless to pursue the subject further. The only question remaining to be decided is the amount to which Vyfhuis is entitled.

319.

The report made under the interlocutory order by the Clerk, and commissioners who were called to his assistance, has been objected to on the ground that the merchants who acted on the occasion had no practical experience in the trade to Amsterdam; although those merchants are of highly respectable character, and their general mercantile knowledge unquestionable, yet to obviate the objection, the court will afford an opportunity of a re examination of the accounts against the vessel. It is, therefore, again referred to the clerk, calling to his assistance two merchants of practical experience in the trade to Amsterdam, to examine the accounts under the former interlocutory order. That they audit and state an account, not allowing any advances to the captain on his personal account, and report the same to this court for final adjudication.

SHIP VIRGIN and Claimant, Appellant, *vs.* ADAM VYFHUIS, jr. Appellee. } *In the Circuit Court of the United States for the Fourth Circuit in and for the Maryland District.*

To the honorable the Circuit Court aforesaid:

2d report of the clerk & com'rs.

The undersigned, Philip Moore, clerk of said court, and Luke Tiernan and Joseph King, junior, merchants of the city of Baltimore, of practical experience in the trade to Amsterdam, acting as assistants of said Philip Moore, and under his appointment, in the examinations and determination herein after mentioned, beg leave to report to the court, that, in pursuance of the court's interlocutory decree in this cause, pronounced on the fifth day of May, 1830. they proceeded to examine the expenditures for and concerning the ship Virgin, made at Amsterdam, on her voyage in the proceedings in this cause mentioned, with a view to ascertain the "advances for repairs and supplies which were absolutely necessary, and made in the course of the usual employment of the ship," and also to distinguish those advances not thus necessary. The undersigned, as the result of their examination, beg leave to report that the following expenditures and advances were, in the opinion of the undersigned, absolutely necessary within the terms and meaning of the ascertainment required by the said decree, and made "in the course of the usual employment of the said ship," that is to say:

The cost of articles mentioned in the exhibit of moneys advanced by D'Arnaud & Co and Hooglant and Vyfhuis to the Captain	f. 913 19
The cost of articles mentioned in exhibit B, except 350 guilders advanced in cash to the Captain - - - -	3,580 14
The cost of articles mentioned in exhibit C, except f. 300 advanced in cash to the Captain - - - - -	2,755 18
	f. 7,250 11

All which is respectfully submitted. Witness our hands, this 15th day of June, 1830.

PHILIP MOORE, *Clk.*
LUKE TIERNAN,
JOSEPH KING, JR.

SHIP VIRGIN, FREDERICK C. GRAF, JOHN C. DELPRAT, Claimants, *vs.* ADAM VYFHUIS, jr.

In the Circuit Court of the United States for the Fourth Circuit in and for the District of Maryland.

Decree. This cause having been fully heard, and the evidence considered, and the court having heretofore passed its decretal order, and thereby referred the accounts between the parties to the clerk of the court, and the said clerk calling to his assistance Luke Tiernan and Joseph King, junior, having, with the concurrence of his said assistants, made report to the court, which was filed the 15th June, 1830, exhibiting and stating the sum of seven thousand two hundred and fifty guilders and eleven steivers Holland currency, amounting to the sum of two thousand nine hundred dollars, to be due to the said appellee, Adam Vyfhuis, junior, in the premises, the said report is this twenty-sixth day of November, in the year eighteen hundred and thirty, by Gabriel Duvall, chief judge of said circuit court, and by the authority of said court, hereby approved and confirmed, and it is thereupon further adjudged, ordered, and decreed by the authority aforesaid, that the said Frederick C. Graf and John C. Delprat, pay and satisfy unto the said Adam Vyfhuis, junior, the sum of two thousand nine hundred dollars, with interest from this twenty-sixth day of November, in the year eighteen hundred and thirty, thereon until paid, together with the legal costs and charges of said Vyfhuis in this cause in the district court, and the circuit court aforesaid, incurred.

G. DUVALL.

Prayer for appeal. From which said decree, so as aforesaid rendered, the said John C. Delprat and Frederick C. Graf, by their attorneys aforesaid, prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the second Monday in January next, and to them it is granted.

And the said Frederick C. Graf, by his attorney aforesaid, files in the circuit court here the following appeal bond, to wit:

Appeal bond. Know all men by these presents, that we, Frederick C. Graff and Justus Hoppee, of the city of Baltimore, in the State of Maryland, are held and firmly bound unto Adam Vyfhuis, junior, of Amsterdam, in the Kingdom of Holland, in the just and full sum of six thousand dollars current money of the United States, to be paid to the said Adam Vyfhuis, junior, his certain attorney, executors, administrators or assigns, to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this day of May, in the year of our Lord one thousand eight hundred and thirty-one.

Whereas, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first day of November, in the year of our Lord one thousand eight hundred and thirty, the said Adam Vyfhuis, junior, by the decree of the same court, recovered against the said Frederick C. Graf, and a certain John C. Delprat, the sum of two thousand nine hundred dollars, with interest from the twenty-sixth day of November, eighteen hundred and thirty, until paid,

together with the legal costs and charges of said Vyfhuis, in this cause incurred. And whereas, the said Frederick C. Graf and John C. Delprat have prayed an appeal from the said decree, so as aforesaid rendered, to the Supreme Court of the United States, to be held at the city of Washington, on the second Monday in January next. Now, the condition of the above obligation is such, that if the said Frederick C. Graf and John C. Delprat shall well and truly prosecute, with effect, their said appeal, and pay to the said Adam Vyfhuis, junior, the said sum of two thousand nine hundred dollars, together with all interest, costs, and damages, which may be awarded by the said Supreme Court, in case they shall fail to make their appeal good, then the above obligation to be void, otherwise to be and remain in full force and virtue in law.

Signed, sealed, and delivered, in presence of }
FREDERICK B. GRAF. }

FREDERICK C. GRAF, [SEAL.]
JUSTUS HOPPEE, [SEAL.]

I am satisfied of the sufficiency of the above security, 27th May, 1831.
CHARLES F. MAYER,
Attorney for Vyfhuis, jr.

Appeal on the part of A. Vyfhuis, jr.

And the said Adam Vyfhuis, junior, by his attorney aforesaid, prayed an appeal from the said decree, so as aforesaid rendered, to the Supreme Court of the United States, to be held at the city of Washington, on the second Monday in January next, and to him it is granted.

SHIP VIRGIN and Claimants, Appellants, *vs.* ADAM VYFHUIS, jr., Appellee. } *In the Circuit Court.*

Agreement.

It is agreed that sufficient vouchers of payment were produced by the appellee for the items in the accounts B and C, exhibited with the libel. These accounts are those referred to as exhibits B and C, in Captain Cunyngham's first deposition, and in the reports of the clerk and assistants under the interlocutory orders. They need be copied but once into the transcript for the Supreme Court, that is, as exhibits, with the libel. It is agreed that the transcript be made out in the following order:

Libel, with exhibits A and B and C, taking as exhibit A, the translation of the bottomry bond, exhibit B, annexed to Captain Cunyngham's second deposition, instead of the original exhibit A, actually filed, which is in French.

Answers.

1st deposition of Captain Cunyngham.

2d deposition of Captain Cunyngham, not copying again the translation of the bottomry bond.

Letter from Frederick C. Graf to Captain Cunyngham, date, Balt. 6th Sept. 1822.

Disbursements proved by Captain Cunyngham at the hearing, to have been made by him out of the moneys advanced on the bottomry, being the